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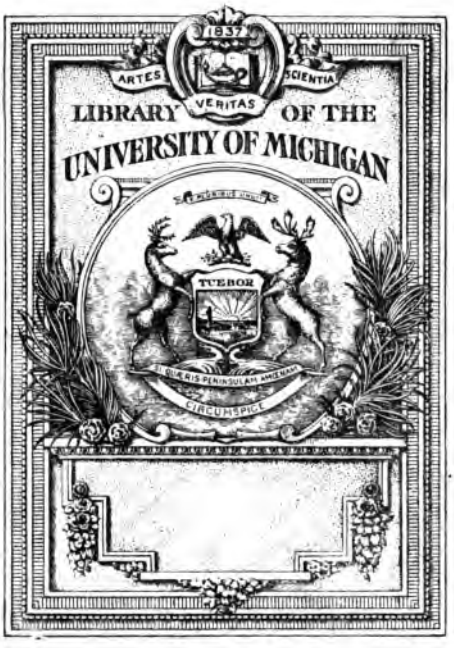
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WORKMEN'S COMPENSATION LAW

"PERSONAL INJURY BY ACCIDENT
ARISING OUT OF AND IN THE COURSE OF
THE EMPLOYMENT"

BY
P. TECUMSEH SHERMAN
of the New York Bar

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PREFACE

Ths purpose of the workmen's compensation laws is to provide indemnity for the loss resulting from personal accidents due to risks of work or employment. But it is difficult to define that idea in few words, and frequently yet more difficult to apply any definition adopted to actual occurrences. Our American statutes have generally copied the definition contained in the British statute,[1] which definition is used as the title of this work. Consequently and because of the close relations between the American and British systems of law and the accessibility of British law reports, our courts are naturally inclined to regard only British precedents, besides our own, in construing our compensation laws. But there may be something gained by looking further on this point, since approximately all the European laws, however much they may differ in their other provisions, being alike based upon the doctrine of "trade risk,"[2] are alike as to the class of injuries they are intended to cover, though they may define such class of injuries in slightly different terms; and consequently the problems of construction on this point under all of such laws are substantially the same. Conspicuous among the other compensation laws are those of Germany[3] and France.[4] The German law has been the longest in force and the most completely construed; and the decisions of the Imperial Insurance Office construing it are conveniently accessible in the form of an official and authoritative digest or summary.[5] The decisions of the courts construing the French law are likewise readily accessible.[6] Therefore in this work, which is an attempt to compile a concise but complete summary of the decisions construing the British law on the subject specified (exclusive of overruled and obsolete cases), abbreviated summaries of so much of the French and German laws as is appropriate are added for comparison under each topic. The decisions construing our American statutes are as yet too few and cover too small a portion of the field to be summarized separately. Therefore they are simply cited in separate footnotes under the text relating to the British law.

NEW YORK, 1916. P. TECUMSEH SHERMAN.

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[1]The Workmen's Compensation Act, 1906, replacing The Workmen's Compensation Acts, 1897 and 1900.

[2]As to what is meant by the doctrine of "trade risk," cf. "The Jurisprudence of the Workmen's Compensation Laws," by the writer, University of Pennsylvania Law Review, October, 1915.

[3]The "Industrial Accident Insurance Law," being part of the Workmen's Insurance Code of July, 1911, and replacing the Law of June 30, 1900, which in turn replaced the Law of July 6, 1884.

[4]Laws of April 9, 1898, June 30, 1899, and April 12, 1906, as amended.

[5]"Handbuch der Unfallversicherung, 1909" (Kreitkopf & Hartel, Leipzig, 1909). This publication was previous to the Code of 1911; but there were no material amendments in that Code to the provisions of the earlier law herein discussed.

[6]"Receuil des Documents sur les Accidents du Travail, Reunis par le Ministere du Travail et de la Prevoyance Sociale — Jurisprudence" ((Berger-Levrault, Paris, seril).

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CONTENTS

Page

"Personal Injury by Accident" 7

British Law 7
Aggravation of Pre-existing Diseases, etc. 10
Aggravation by Subsequent Causes 11

German Law 13
Aggravation of Pre-existing Diseases, etc. 13
Aggravation by Subsequent Causes 14

French Law 15
Aggravation of Pre-existing Diseases, etc. 16
Aggravation by Subsequent Causes 16

"Arising out of and in the Course of the Employment" 18

"Arising out of" 18
"In the Course of" 19
The Work (The Employment) 23
Acts of Devotion 29
Acts of Favor 29
Acts Done to Satisfy the Workman's Personal Needs 31
Acts Done for the Workman's Own Purpose 34
Getting to and from Work 35
Getting Wages, etc. 41
Repairing Tools 42
Intermissions During Work 42
Rest in Employer's Lodgings and Strange Places 43
Journeys, Errands, etc. 44
Victim's Fault 48
Victim's Weakness or Sickness 49
"Larking" 50
Quarrels Among Co-employees 51
Fault of Co-employee 52
Intentional Assaults 53
Street Accidents 55
Neighborhood Risks 56
Risks from Insects, Animals, etc. 57
Poisonings 57
Forces of Nature 58

Proof 60

British Law 60
German Law 65
French Law 66

ABBREVIATIONS USED.

B. .....Butterworth's Workmen's Compensation Cases.

Cass. civ.....Cour de Cassation, Chambre Civile.

Cass. req.....Cour de Cassation, Chambre des Requêtes.

Handbuch ....Handbuch der Untallversicherung, 1909.

H. L.....Indicates decision by House of Lords.

Ir. L. T.....Law Times Reports, Ireland.

Ir. R.....Irish Law Reports.

M.-S. .....Minton-Senhouse's Workmen's Compensation Cases.

Q. B.....Law Reports, Queen's Bench Division.

Sc. L. R.....Scotch Law Reporter.

Sachet. .....“Traité de la Legislation sur les Accidents du Travail” (Paris, 1909).

WORKMEN'S COMPENSATION LAW

Personal Injury by Accident Arising Out of and in the Course of the Employment

"PERSONAL INJURY BY ACCIDENT."

The subject matter for compensation is "personal injury by accident."[1] The injury must result either in death or incapacity or reduced capacity for work.[2] Incapacity for work includes inability to obtain enmployment resulting from the injury.[3] [a] The basis for the indemnity is the economic loss of earnings or in earning capacity. The rules for measuring and indemnifying such loss differ greatly under the different laws. Because of such differences these latter topics will be ignored and attention will be confined to the elementary question of what constitutes a personal injury by accident.

THE BRITISH LAW. The word accident is used in its popular and ordinary sense, and denotes an unlooked-for mishap or an untoward event which is not expected or designed.[4] [b] An internal injury caused by exertion in the ordinary course of work is an accident; therefore an accident implies nothing strictly fortuitous.[5] No slip, wrench, sudden jerk, unusual exertion or exterior violence[c] is necessary to constitute an accident.[6] Where an injury is brought on suddenly by exposure to excessive heat, fumes, etc., it is none the less an accident because such exposure was usual in the work.[7] An assault may be an accident to the victim though the resulting injury was intended by the person committing the assault.[8]

A nervous shock through witnessing an accident[9] or caused by the excitement of an impending disaster[10] is an accident. And the mental or nervous effects of an accident are just as much an injury by accident as are its physical effects;[11] [d] but to be charged to the accident the nervous-

[1]Under the British law some enumerated "industrial diseases" are treated as work accidents under certain conditions; Act of 1906, §8. Under the German Code of 1911 (§547), the Federal Council is authorized to extend the accident insurance to specified occupational diseases, but has never done so.

[2]The incapacity must also continue beyond an initial "waiting period." The provisions as to the waiting period differ under the different laws.

[3]Cf. Ball v. Hunt (H. L., 1912), 5 B. 459; Handbuch, p. 262; and to same effect, though not expressly, Cass. civ., Jan. 7, 1902.

[4]Fenton v. Thorley (H. L., 1903), 5 M.-S. 1.

[5]Id., overruling Hensey v. White (1900), 2 M.-S. 1. and the decisions in which that case was followed, and expressly approving Stewart v. Wilson's Co. (1902), 40 Sc. L. R. 80.

[6]Clover, Clayton & Co. v. Hughes (H. L., 1910), 3 B. 275.

[7]Ismay v. Williamson (H. L., 1908), 1 B. 232. Contrast the German law, post, p. 13.

[8]Trim School v. Kelly (H. L., 1914), 7 B. 274, overruling Murray v. Denholme (1911), 5 B. 496. See also cases cited under "Assaults," post. p. 53.

[9]Yates v. South Kirkby Co. (1910), 3 B. 418; and cf. Aitken v. Finlayson (1914), 7 B. 918.

[10]Pugh v. London R'y Co. (1896), 2 Q. B. 248.

[11]Eaves v. Blaenclydach Co. (1909), 2 B. 329; Morris v. Turford (1913), 6 B. 606. Such cases are subject to a strong suspicion of malingering; cf. Ogden v. South Kirby Co. (1913), 6 B. 573.

[a] Ignored in Shinnick v. Clover Co. (N. Y., 1915), 169 App. Div. 236; cf. Duprey's Case (1915), 219 Mass. 189.

[b] Bryant v. Fissell (1913), 84 N. J. L. 72.

[c] Bystrom v. Jacobson (Wisc., 1916), 155 N. W. 919.

[d] Hunnewell's Case (1915), 220 Mass. 351.

ness must be such as a reasonable person cannot overcome,[12] and must not be due to the victim's subsequent misconduct.[13]

The accident need not be the proximate[e] or sole cause of the injury, it being sufficient that it is a contributing cause.[14] And the injury need not be the natural or probable consequence of the accident,[f] it being sufficient that it in fact results from it without the intervention of some new and unconnected cause.[15]

Diseases of gradual onset, which arise out of continued exposure or of continued labor, are not accidents.[16] Death or incapacity from disease [17] is not an accident unless the disease which caused such death or incapacity can be definitely connected in the relation of effect to cause with some unusual, unexpected and undesigned event arising at an ascertained time.[18] Though a disease arises out of and and in the course of the employment it is not covered by the law[17] unless the victim can indicate the particular time, place and circumstances in which the injury occurred.[19] [g]

"Miners' beat hand" and "miners' beat knee" are not injuries by accident.[20] Neither is lead workers' paralysis.[21] [h] Nor are physical trouble due to the habitual use of certain tools, etc.[22] And the injuries in the following cases were held not to have occurred by accident: Where a miner by repeated excessive exertions strained his heart until it finally was overstrained.[23] Where a workman, suffering from progressive heart disease, became faint while hurrying to a station with a seventeen-pound parcel, and died shortly afterward.[24] Where a workman, suffering from progressive disease of the heart in an advanced stage, while lifting a derailed hutch felt a sharp pain near the heart, followed by palpitations and shortness of breath, and had to quit work.[25] Where a farm laborer suffered a recurrence of an old rupture while driving a sow, there being no proof of anything specific having happened to cause the rupture to recur.[26] Where an apparently healthy farm laborer died from heart failure due in part to the strain of repeatedly stooping to fill a basket with corn and then lifting it.[27] Where a ship's officer died soon after leaving port from

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[12]Turner v. Brooks (1909), 3 B. 22.

[13]Cf. Holt v. Yates (1909), 3 B. 75; Higgs v. Unicome (1913), 6 id. 205; and post, pp. 12-13.

[14]Clover, Clayton & Co. v. Hughes (H. L., 1910), 3 B. 275. Contrast the French rule, post, p. 16.

[15]Cf. Dunham v. Clare (1902), 4 M.-S. 102.

[16]Broderick v. London County Council (1908), 1 B. 219; Steel v. Cammell, Laird & Co. (1905), 7 M.-S. 9.

[17]Except an "industrial disease" covered by the special provisions of the compensation act.

[18]Cf. Drylie v. Alloa Co. (1913), 6 B. 398; but see Ismay v. Williamson and other cases cited post, p. 9.

[19]Martin v. Manchester (1912), 5 B. 259; Eke v. Hart-Dyke (1910), 3 B. 482; Finlay v. Tullamore Union (1914), 7 B. 973; cf. Sherwood v. Johnson (1912), 5 B. 686; and Howe v. Fernhill Collieries (1912), 5 B. 629.

[20]Marshall v. East Holywell Co. and Gorley v. Backworth Collieries (1905), 7 M.-S. 19.

[21]Steel v. Cammell (1905), 7 M.-S. 9.

[22]Noden v. Galloways (1912), 5 B. 7; Walker v. Hockney (1909), 2 B. 20.

[23]Coe v. Fife Co. (1909), 2 B. 8.

[24]O'Hara v. Hayes (1910), 3 B. 586.

[25]Spence v. Baird (1912), 5 B. 542.

[26]Walker v. Murrays (1911), 48 Sc. L. R. 575; and cf. Clarkson v. Charente Co. (1913), 6 B. 540.

[27]Ritchie v. Kerr (1913), 6 B. 419.

[e] Cf., emphasis on proximate cause, Gt. Western Co. v. Pillsbury (Cal., 1915), 151 Pac. 1136: Voorhees v. Smith (1914)), 86 N. J. L. 500; Milwaukee v. Industrial Commission (1915), 160 Wisc. 238. Some of our American statutes have special provisions defining the relation of causality required.

[f] Sponatski's Case (1915), 220 Mass. 526. Some of our American statutes have special provisions attempting to define what shall be deemed to be the consequences of accidents.

[g] Liondale Works v. Riker (1914), 85 N. J. L. 426; *contra*, Vennen v. New Dells Co. (1915). 61 Wisc. 370 (typhoid fever).

[h] *Adams v. Acme Co. (1914)*, 182 Mich. 157.

heart failure due to the continuous strain of his work while in port.[28] Where a canvasser contracted a chill, resulting in a disease, through sweating while climbing the stairs of a tenement.[29] Where a miner contracted a chill, from which permanent injury resulted, by standing some minutes in water at the foot of the mine shaft in order to ascend out of the mine ahead of his turn.[30] Where a workman employed in a sewer contracted enteritis from inhaling sewer gas.[31] Where a workman employed to handle sewage thereby contracted typhoid fever.[32] Where a gardener was engaged in opening and examining cesspools for four or five days and subsequently developed a case of sewer gas poisoning.[33] Where a porter in a scarlet fever hospital suffered an attack of that disease, but there was no evidence to fix the date of the infection.[34] Where a workman employed to dip rings in a chemical bath became affected with eczema through continued exposure to fumes or splashes from the chemical.[35] [i] Where a workman suffered from blood poisoning caused by the pressure of a tight boot worn at work.[36]

On the other hand, where a disease occurs "by accident," as above defined, the fact that it is a disease does not render it any the less an injury by accident than if it were a wound.[37] [j] It was so held where a sailor inadvertently drank some cleaning fluid[38] and where a workman contracted anthrax through the passing of a bacillus of that disease from some wool on which he was working into his eye.[39] Where a stoker died from a stroke, brought on by extreme heat in the stokehole, it was held that the fact that such heat was a normal condition of his work did not render the stroke any the less an accident.[40] And in the following cases diseases were held to have been caused by accident: Where a workman, cleaning a millrace, caught a sudden chill, caused by immersion in cold water.[41]. Where a dock laborer, unloading a cargo of bran, got a sore eye from some grit in the bran lodging in his eye.[42] Where a gardener caught tetanus from a nail piercing his boot.[43] Where a healthy laborer suddenly quit work in great pain and three days later died of pneumonia, immediate medical examination showing marks of an accident on his body, and the medical evidence indicating an accident of exterior violence as the origin of his disease.[44]. Where a scullion incurred a skin disease, to which he was predisposed, by one day for several hours wash-

[28]Black v. New Zealand Co. (1913), 6 B. 720.
[29]McMillan v. Surger Co. (1913), 6 B. 345.
[30]McLuckie v. Watson (1913), 6 B. 850. Contrast with Drylie v. Alloa Co. (1913), 6 B. 549; Brown v. Watson (1914), 7 B. 260; and Sheerin v. Clayton (1910), 3 B. 583.
[31]Broderick v. London Council (1908), 1 B. 219.
[32]Finlay v. Tullamore Union (1914), 7 B. 973.
[33]Eke v. Hart-Dyke (1910), 3 B. 482.
[34]Martin v. Manchester (1912), 5 B. 259.
[35]Evans v. Dodd (1912), 5 B. 305; to similar effect Petschett v. Preis (1915), 8 B. 44.
[36]White v. Sheepwash (1910), 3 B. 382.
[37] Brintons v. Turvey (H. L., 1905), 7 M.-S. 1. Note in this connection that the doctrine of Walker v. Lilleshall Co. (1900), 2 M.-S. 7, is overruled in Fenton v. Thorley, supra. Cf. also Thompson v. Ashington Co. (1901), 3. M.-S. 21.
[38]McKinnon v. Hutchinson (1915), 8 B. 624.
[39]Brintons v. Turvey, supra.
[40]Ismay v. Williamson (H. L., 1908), 1 B. 232; and cf. Kelly v. Auchinclea Co. (1911), 4 B. 417; Maskery v. Lancashire Co. (1914), 7 B. 428; Johnson v. S. S. "Torrington" (1909), 3 B. 68; Broforst v Blomfield (1913), 6 B. 613.
[41]Sheerin v. Clayton (1910), 3 B. 583; followed in Glasgow Co. v. Welsh (1915), 8 B. 635. But cf. McLuckie v. Watson (1913), 6 B. 850.
[42]Adams v. Thompson (1911), 5 B. 19.
[43]Walker v. Mullins (1908), 1 B. 211.
[44]Lovelady v. Berrie (1909), 2 B. 62.

[i] Cf. Liondale Works v. Riker, supra.
[j] Rist v. Larkin (N. Y., 1916), 171 App. Div. 71 (falling in water); Plass v. Central R. R. (N. Y., 1915), 169 App. Div. 826 (poisoning by poison-ivy); In re McPhee (Mass., 1915), 109 N. E. 633 (inhaling *damp smoke* and getting drenched).

ing crockery in a mixture of hot water, soap and caustic soda.[45] Where a shot firer in a mine died from pneumonia caused by the inhalation of carbonic monoxide gas generated by a particular explosion.[46] Where a gateman and telephone operator of a mill ran to observe a bad scaffold accident in the mill, thence ran back to his post to telephone for medical assistance, and while telephoning was seized with an epileptic fit, due to the excitement and exertion, from which he died.[47] Where, owing to a breakdown of the mine machinery, a miner was forced to wait for some time standing in cold water, in consequence of which he took cold and subsequently died.[48] Where a pilot jumping for his own boat, in order to return ashore from a ship, upset it so that it filled with water and he had a narrow escape from drowning, and developed sciatica from his wetting.[49]

Sunstrokes and "frostbites" are accidents.[50]

AGGRAVATION OF PRE-EXISTING DISEASES, ETC. Where a pre-existing disease is brought to a crisis by an accident, it is an injury by accident.[k] To constitute such an accident it is sufficient that a merely normal exertion of even the lightest kind of work has contributed to the result, the test in case of death being, was it the disease that caused the death, so that whatever the workman had been doing he would probably have died all the same, or did the work he was doing contribute to it in any material degree.[51] So also it is an injury by accident where the accident merely accelerates an otherwise probable result of disease.[52] And also where the pre-existing disease is aggravated or accelerated, not directly by the accident, but indirectly by some consequence of the accident.[53] In each of the following cases death or incapacity from disease was held to be an injury by accident: Where a workman, suffering from an aneurism in such an advanced condition that it might have burst even while he was asleep, fell dead while tightening a nut with a spanner, without any unusual exertion.[54] Where a workman, whose arteries were in a degenerate condition, while moving a very heavy weight, which was not

[45]Dotzauer v. Strand Hotel (1910), 3 B. 387.

[46]Kelly v. Auchinclea Co. (1911), 4 B. 417.

[47]Aitken v. Finlayson (1914), 7 B. 918.

[48]Drylie v. Alloa Co. (H. L., 1913), 6 B. 398; to same effect, Brown v. Watson (H. L., 1914), 7 B. 259.

[49]Barbeary v. Chugg (1915), 8 B. 37.

[50]See "Action of Forces of Nature," post, p. 58.

[51]Clover, Clayton & Co. v. Hughes (H. L., 1910), 3 B. 275; followed in McArdle v. Swansea Trust (1915), 8 B. 489. Cf. note 54, infra. The unfortunate consequences of so attributing to accidents injuries due principally or almost entirely to pre-existing diseases and infirmities are explained and an alternative rule presented in "The Consequences of Accidents under Workmen's Compensation Laws," by the writer, University of Pennsylvania Law Review, March, 1916. Contrast the qualifications to this rule under the German and French laws, post. There is another question involved in the rule of this case, namely: Where an injury is due in part to an accident and in part to a pre-exisitng disease, should it not be divided into two parts, one part traumatic and the other part morbid, and the indemnity be based solely upon the former? The rule based upon the negative answer to that question has some serious social disadvantages; cf. my article, cited supra.

[52]Golder v. Caledonian R'y (1902), 40 Sc. L. R. 89; and cf. Willoughby v. Gt. Western R'y (1904), 6 M.-S. 28; Woods v. Wilson (H. L., 1915), 8 B. 288; and Lloyd v. Sugg (1900), 2 M.-S. 5.

[53]Ystradowen Co. v. Griffiths (1909), 2 B. 357. But cf. Taylor v. Clark (H. L., 1914), 7 B. 871.

[54]Clover, Clayton & Co. v. Hughes (H. L., (1910), 3 B. 275. This decision is recognized to go to an extreme, was the subject of a strong dissent, and has been much limited by later decisions. It really turned upon the question whether the finding of fact by the trial court was so unsupported by evidence that it should be disturbed upon appeal.

[k] Cf. Voorhees v. Smith (1914), 86 N. J. L. 500; Milwaukee v. Industrial Commission (1915), 160 Wisc. 238; Madden's Case (Mass., 1916), 111 N. E. 379; Crowley v. City of Lowell (Mass., 1916), 111 N. E. 786; Poccardi v. Public Service Commission (W. Va., 1915), 84 S. E. 249; Carr v. Knickerbocker Ice Co. (N. Y., 1915), 169 App. Div. 450; Sullivan v. Industrial Co. *Y., 1916)—App.* Div.—; Zappala v. Industrial Commission (1915), 82 Wash. 314.

unusual in his work, had an attack of cerebral hemorrhage as the result of his exertion.[55] Where a workman, suffering from an advanced stage of heart disease, was descending the side of a ship by a rope ladder, when the ladder suddenly twisted, and he gave a cry and fell into the water, it being found that he died from heart disease and not from drowning.[56] Where a fireman on board a ship died from cerebral hemorrhage caused by the heat and drinking excessive quantities of water.[57] Where a workman, suffering from fatty degeneration of the heart, fell dead while pushing a heavy truck.[58] Where a stoker, wearing a truss, suffered a strangulation of the hernia while stoking, which involved a great abdominal strain.[59] Where a fireman, in a diseased condition, suffered an apoplectic stroke while shoveling coal and raking fires in the stokehole of a ship.[60] Where a smith, who had gout in his arms, suffered a renewed attack brought on by a jar received while he was holding a "flatter" for a fellow workman to strike.[61]

AGGRAVATION BY SUBSEQUENT CAUSES. Often an injury by accident is relatively slight until aggravated by some subsequent cause. The question then arises: Under what circumstances will such aggravated injury be considered an injury by accident?

The infection of a wound will be charged to the accident which caused the wound unless due to a *novus actus interveniens*—a new and unconnected cause.[62] [l]

The consequences of defective medical or surgical treatment are not results of the accident.[63] [m] But death under an anaesthetic administered for a reasonable operation will be deemed to have resulted from the accident,[64] even though at the same time the victim was operated upon also for some other trouble than that caused by the accident.[65] But the contrary was held where immediately after an operation for the injury caused by the accident the workman died following a second administration of anaesthetics to remove a tooth.[66]

If it can be shown that the pain and depression following an accident have caused the victim to lose his reason, with the result that he has committed suicide, his death will be held to be the result of the accident.[67] [n] As to inferences, see under "Proof."[68]

An injury from one accident may be the result of an injury from another, earlier accident.[69]

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[55]McInnes v. Dunsmuir (1908), 1 B. 226.
[56]Trodden v. Lennard (1911), 4 B. 190.
[57]Johnson v. S. S. "Torrington" (1909), 3 B. 68.
[58]Doughton v. Hickman (1913), 6 B. 77.
[59]Scales v. West Norfolk Co. (1913), 6 B. 188; to same effect, Brown v. Kemp (1913), 6 B. 725.
[60]Broforst v. S. S. "Bloomfield" (1913), 6 B. 613.
[61]Lloyd v. Sugg (1900), 2 M.-S. 5.
[62]Cf. Dunham v. Clare (1902), 4 M.-S. 102. As to the consequences of the victim's neglect to care for the wound, cf. Snelling v. Norton Co. (1913), 6 B. 507; Adams v. Thompson (1911), 5 B. 19; and post, p. 12.
[63]Humber Co. v. Barclay (1911), 5 B. 142; Rocca v. Stanley Jones (1914), 7 B. 101. But see Peadle v. Milton (1903), 5 M.-S. 55, and note 80, post, p. 12.
[64]Shirt v. Calico Ass. (1909), 2 B. 342.
[65]Thompson v. Mutter (1913), 6 B. 424.
[66]Charles v. Walker (1909), 2 B. 5.
[67]Cf. Malone v. Cayzer (1908), 1 B. 27.
[68]Post, p. 61.
[69]Cf. Hodgson v. Robins (1914), 7 B. 232.

[l] Cf. Kell v. Industrial Commission (1915), 160 Wisc. 549; Gt. Western Co. v. Pillsbury (Cal., 1915), 151 Pac. 1136; Cline v. Studebaker (Mich., 1915), 155 N. W. 519.

[m] Contra, it being the employer's duty to furnish medical care, etc., Ross v. Erickson Co. (Wash., 1916,) 155 Pac. 153; Paulak v. Hayes (Wisc., 1916), 156 N. W. 464; but cf. Newcomb v. Albertson (N. J., 1914), 89 Atl. 928.

[n] Sponatski's Case *(1915), 220* Mass. 351.

Where an injury by accident is aggravated by a subsequently contracted disease, the resulting incapacity will be attributed to the accident.[70] So also where the contraction of a disease is occasioned by the workman's debilitated condition immediately after an accident.[71] [o] Where a workman recovers from the injury directly resulting from an accident but dies from a disease which proves fatal owing to the weakened condition to which he was reduced by the accident, his death is the result of the accident.[72] [p]

The statutory obligation of the employer to pay compensation is subject to the implied condition that the injured workman shall use such reasonable care and submit to such remediable measures as are practicable to reduce the consequences of his injury.[73] He must submit to all reasonable surgical operations[74] and comply with simple medical directions;[75] and the consequences of unreasonable[76] refusal or failure to submit or comply are not deemed to be results of the accident.[q]

Though the express rule is, as just stated, that the workman must take reasonable care of himself after an accident, yet it has been held that death from pneumonia resulting from a neglected cold caused by an accident is the result of the accident,[77] and that the loss of an eye, due to constantly rubbing it after it had become inflamed through getting some grit in it, is likewise the result of the accident.[78] Apparently the victim may neglect a trivial wound until it becomes manifestly serious, without any break being recognized in the chain of causation; but failure to give notice thereupon prejudices the employer.[79] Where an injured workman was sent to a hospital, but insisted upon leaving it and going home in spite of the doctor's warning that it would be dangerous to life, it was held that his consequent death was the result of the accident, it being found that but for the accident he would not have died at the time at which and in the way in which he did die.[80]

Where a workman's injury has healed but he is still too weak to work, because he has unreasonably refrained from proper exercise, his continuing incapacity will not be attributed to the accident.[81] So also where his injury has healed, but he remains incapacitated because he has brooded so much over his accident that his mind will not allow him to muster courage to return to his work.[82] Where after partial recovery an injured workman improperly refuses "light work" to start in with, his

[70] Brown v. Kent (1913) 6 B. 745.

[71] Ystradowen Co. v. Griffiths (1909), 2 B. 357.

[72] Thoburn v. Bedlington Co. (1911), 5 B. 128; and cf. Euman v. Dalziel (1913), 6 B. 900. Contrast the French and German rules, and more particularly the latter.

[73] Donnelly v. Baird (1908), 5 B. 95.

[74] Id.; Warncken v. Moreland (1909), 2 B. 350; and cf. Tutton v. S.S. "Majestic" (1909), 2 B. 346; Moss v. Akers (1911), 2 B. 294; Wheeler v. Dawson (1912), 4 B. 645.

[75] Dowds v. Bennie (1903), 40 Sc. L. R. 239.

[76] As to what is reasonable or unreasonable, cf. Sweeney v. Pumpherston Co. (1903), 40 Sc. L. R. 721; Dowds v. Bennie, id., 239; Smith v. Coed Co. (1900), 2 M.-S. 121; Rothwell v. Davies (1903), 5 M.-S. 141; Burgess v. Jewell (1911), 4 B. 145; Walsh v. Locke (1914), 7 B. 117; Dolan v. Ward (1915), 8 B. 514; Wright v. Sneyd Collieries (1915), 8 B. 537; Gracie v. Clyde Co. (1915), 8 B. 630.

[77] Drylie v. Alloa Co. (H. L., 1913), 6 B. 398.

[78] Adams v. Thompson (1911), 5 B. 19; but, as to proof, cf. Bellamy v. Humphries (1913), 6 B. 658.

[79] Cf. Snelling v. Norton Hill Co. (1913), 6 B. 507; Dalgiesh v. Gartside (1914), 7 B. 535, 539.

[80] Dunnigan v. Cavan (1911), 4 B. 386. Contrast with the German and French rules, post.

[81] Upper Forest Co. v. Gray (1910), 4 B. 424; David v. Windsor (1911), 4 B. 177; but see Moss v. Akers (1911), 4 B. 294.

[82] Holt v. Yates (1909), 3 B. 75; Higgs v. Unicome (1913), 6 B. 205.

[o] Cf. Burns' case (1914), 218 Mass. 8.

[p] Cf. Eagle Co. v. Nowak (1915), 161 Wisc. 446.

[q] Cf. Jendrus v. Detroit Co. (Mich., 1913), 144 N. W. 563; McNally v. Hudson Co. (1915), 87 N. J. L. 456.

continued incapacity may be due to that cause and not to his accident.[83] If after injury he takes to drink and for that reason loses employment, such inability to retain employment is not the result of the accident.[84] But the contrary was held where a workwoman, taken back after injury at her old job and old wages, left because frequently found fault with for clumsiness resulting from her accident.[85]

Where a workman is incapacitated through injury by accident his right to compensation is not forfeited by the fact that his incapacity for work is added to or, as it were, confirmed by some independent cause, such as by being in jail [86] or by a subsequent attack of heart disease.[87]

THE GERMAN LAW. The word accident is to be taken in its common or general sense, to mean a suddenly occurring injury to bodily or mental health.[88] It does not matter that the results of the accident become apparent only gradually.[89] Exactly how sudden the event must be is not defined,—an elapsed time of several hours or the period of an uninterrupted working shift comes within the requirement.[90] Occupational and other diseases of gradual growth are not accidents.[91] Neither are sores brought on gradually by the habitual use of tools.[92]

The following have been held to be accidents:[93] Poisoning by inadvertently drinking a poisonous fluid, by a single breath or several consecutive breaths of a harmful gas, or by the bite of an insect. Infection of a wound by the entrance therein of poisonous matter, etc. Disease resulting from a single or several quickly repeated absorptions of disease germs through the mouth, the nose, or the pores of the skin. Eye injury through a single though lengthy exposure to deleterious fumes, etc.

An injury to health resulting from continued exposure to unfavorable working or weather conditons, such as draft, dampness, excessive heat, rain, etc., is not an accident, even where the illness becomes suddenly apparent, as in the case of a stroke, if no sudden event can be shown to which to attribute it.[94] But injuries to health due to unusual and sudden exposure to extreme cold, heat, wet, etc., or to drafts when overheated, may be accidents.[95] Caisson workers' disease, vulgarly known as "the bends," is an accident.[96]

The fact that an injury is intentionally inflicted by another person does not prevent its being an accident within the meaning of the law.[97]

AGGRAVATION OF PRE-EXISTING DISEASES, ETC. Where death or incapacity is due partly or even principally to a pre-existing disease, it is nevertheless an injury by accident, if an accident has *appreciably* contributed to bring it about.[98] And it does not make it any the less an injury by accident that, were it not for the accident, the death or incapacity would have resulted from the disease within some

[83]Furness v. Bennet (1910), 3 B. 195; and cf. Devlin v. Chapel Co. (1914), 8 B. 327.
[84]Hill v. Ocean Co. (1909), 3 B. 29; but cf. White v. Harris (1910), 4 B. 39.
[85]Ward v. Miles (1911), 4 B. 182.
[86]McNally v. Furness (1913), 6 B. 664; Clayton v. Dobbs (1908), 2 B. 488.
[87]Harwood v. Wyken Co. (1913), 6 B. 225.
[88]Handbuch, pp. 69, 249.
[89]Id.
[90]Id., pp. 69-70.
[91]Id., pp. 70-72.
[92]Id., pp. 72-73.
[93]Id., pp. 112-113 and 70-71.
[94]Id., p. 71. Contrast with British rule.
[95]Id., p. 72; and see cases cited under "Forces of Nature," post, p. 59.
[96]Id., p. 72.
[97]Cf. Id., pp. 83-87; and cases cited under "Assaults," post, p. 54.
[98]Id., p. 249.

certain short time anyhow.[99] And the same is true where the death or incapacity is due principally to the infirmities of old age.[100] But the employment cannot be held responsible for sudden injuries to health occurring during the course of the work, if they may be accounted for altogether by bodily predisposition and by reason of their causes cannot be deemed accidents in the common sense of the word.[101] In general, outbreaks of hernia, tuberculosis, heart disease, etc., occurring during the work, are not to be deemed work accidents unless there was some severe exertion or event of violence to cause them, it being considered otherwise that the work only furnished the opportunity for and was not the cause of such outbreaks; but where peculiar circumstances clearly indicate that a merely normal exertion has truly caused an outbreak of disease it will be held a work accident.[102] Such is seldom the case with hernia.[103]

AGGRAVATION BY SUBSEQUENT CAUSES. As to the aggravation of accidental injuries by subsequent causes, the general principles are as follows: Death or incapacity need not be the direct result of the accident, but may result indirectly from unfavorable circumstances produced by the accident. And the accident need not be the sole cause of the death or incapacity, it being sufficient that it is a weighty contributing cause.[104]

The infection of a wound will not be charged to the accident which caused the wound, where it is due to the intervention of some new trouble.[105] But where a workman broke a painless blister while at work and subsequently was incapacitated by a severe inflammation owing to an infection of the wound, it was held that such injury was the result of the accident, regardless of whether the infection occurred at or away from work.[106]

The consequences of injudicious medical or surgical treatment of injuries are generally held to be results of the accidents which caused the injuries.[107] Death from heart failure through fright, caused by an impending surgical operation, was held to be the result of the accident which necessitated the operation.[108]

Under some circumstances poisoning caused by the workman's inadvertently taking internally medicine meant for external use during the treatment of his injury will be considered a result of the accident; but not where the medicine was carelessly administered to him, in his own home by his small child.[109] Where a workman deliberately takes more of a medicine than ordered, the consequences are not to be attributed to the accident.[110]

Under some circumstances a contagious disease contracted in a hospital to which the injured workman has been sent for treatment may be attributed to the accident; but only where the risks of contagion therein

[99]Handbuch, pp. 255-6.
[100]Id., p. 256.
[101]German Imperial Insurance Office, Feb. 26, 1914, cit. "Bulletin des Assurances Sociales," April, 1914, p. 26.
[102]Handbuch, pp. 72-76. Contrast with British rule.
[103]Id., pp. 73, 267.
[104]Id., p. 249.
[105]Id.
[106]Id.
[107]Cf. Id., p. 250. This conclusion would seem to follow from the fact that the employers' associations have the right to select the physicians and surgeons who prescribe the treatment.
[108]Id.
[109]Id., p. 251.
[110]Id.

were greater than those to which he would otherwise have been exposed [111] Generally, typhoid fever may not rightly be so attributed.[112]

Death by suicide will be considered the result of a previous accident, and not an intentional injury[113] if it results from a mental disturbance or condition of irresponsibility produced by the accident.[114]

A new accident on the journey after injury to or from a hospital will be deemed a result of the original accident if due to the enfeebled condition of the injured person or to extraordinary risks incurred on the journey.[115] But the usual risks of travel on street or railway cars are not such extraordinary risks.[116] Where a workman who had broken his leg in a work accident, subsequently and soon after the leg had healed, fell on level ground and broke it again in the same place, it was held, the evidence in support of the conclusion being exceptionally clear, that the second injury was the result of the original accident.[117]

The victim of an accident is bound to conduct himself in such a manner as to reduce its evil consequences as much as possible; and if he purposely or, under some circumstances, through his fault hinders recovery or aggravates the injury, the consequences which would have been avoided by proper conduct are not to be ascribed to the accident.[118] But this rule is applied reasonably; and it will not be assumed that an incurable disease would have been cured or that a lost limb would have grown again had it not been for the victim's misconduct.[119] Where a workman has recovered from the injury directly caused by an accident, but is incapacitated because he has become hysterical through worrying over the chances of his claim for compensation, his continued incapacity is not an injury by accident.[120] And, generally, where drunkenness interferes with the treatment none of the consequences which would probably have been avoided had it not been for such drunkenness should be charged to the accident.[121]

THE FRENCH LAW. Under the French law the word accident has not as yet been entirely defined. It seems an accident means an injury to the person due to the violent and sudden action of an exterior cause, an exertion being deemed an exterior cause.[122] Where a workman was injured by falling from scaffolding it was held that the fall was itself an accident, and that it was unnecessary to prove that it was due to an exterior, violent and sudden cause.[123] The violent and sudden action of an exterior cause, though neither fortuitous nor unexpected, constitutes an accident.[124] Illness caused by drinking poison by mistake is an injury by accident.[125] The fact that the injury was intentionally inflicted by another person does not prevent its being an accident.[126]

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[111] Handbuch, p. 251.
[112] Sachet, p. 252, citing German Insurance Office.
[113] No compensation is allowed for death or incapacity resulting from an intentionally designed accident; Handbuch, p. 250.
[114] Id., p. 253.
[115] Id., p. 251.
[116] Id.
[117] Id., p. 250.
[118] Handbuch, p. 91. Unreasonable refusal to submit to medical or surgical treatment is misconduct; cf. Handbuch, pp. 251, 252, 257, 312, 313.
[119] Id., p. 92.
[120] Id., p. 250.
[121] Id., p. 251.
[122] Cf. cases cited following.
[123] Cass. civ., Jan. 8, 1912.
[124] Cass. civ., Feb. 21, 1912.
[125] Cass. req., Nov. 22, 1908.
[126] Cass. req., June 2, 1913; Tribunal de la Seine, Feb. 7, 1905.

Occupational diseases to which one cannot assign a definite cause and date of origin are not accidents.[127] Neither are sores brought on gradually by the use of tools.[128] But a disease which, though contracted through industrial work, had its origin and cause in a fixed event, not occurring in the normal conditions of such work, is an accident.[129] How sudden such event must be has not yet been specified by the highest court. A lower court has held that where a contractor's workman caught the smallpox while demolishing a smallpox hospital, the disease was an injury by accident, laying emphasis upon the abnormal conditions of the work, without reference to any date of infection.[130]

Sunstroke is an accident.[131]

AGGRAVATION OF PRE-EXISTING DISEASES, ETC. Death or incapacity from a pre-existing disease or infirmity is deemed an injury by accident, if the disease or infirmity be brought to a crisis or be aggravated or accelerated by an accident,[132] even though the disease would probably later have produced the same degree of incapacity anyhow.[133]

But before death or incapacity from a pre-existing disease will be attributed to accident, it must be clearly established that the accident was the determining cause of the crisis of the disease and not merely the circumstance to reveal a diseased condition.[134] And the accident must be the direct and immediate cause of the death or incapacity, it not being sufficient that by diminishing the forces of the victim and confining him to bed it has indirectly contributed to that result.[135] If an outbreak of a latent disease is really caused by a simple exertion, even though such exertion is entirely normal to the victim's work, the disease will be considered an injury by accident.[136] But an outbreak of a latent disease, particularly of hernia, will not be attributed to a slight exertion, jolt, stumble or other false movement, if the morbid condition of the victim makes it doubtful that such event was the determining cause.[137]

AGGRAVATION BY SUBSEQUENT CAUSES. As to aggravations of accidental injuries by subsequent causes: It seems that the infection of a wound will be charged to the accident which caused the wound unless it be imputable to the misconduct of the victim; but where a workman's finger nail was torn off and he continued to work, without notice to his employer and without taking any care or precaution, it was held that death resulting from an infection of the wound should be charged to his misconduct.[138]

Where a workman died from the effect of chloroform administered for the purpose of an operation by a surgeon engaged by his employer's insurance carrier, it was held that the death was the result of the accident.[139] But whether death or incapacity due to the malpractice of a

[127] Cass. req., July 23, 1902; Cour d'Appel de Grenoble, Jan. 25, 1907.
[128] Cass. req., Nov. 8, 1910.
[129] Cass. req., Nov. 3, 1903.
[130] Cour d'Appel de Paris, May 4, 1906.
[131] Cf. "Forces of Nature." post, p. 60.
[132] Cass. civ., July 18, 1905.
[133] Cass. req., March 25, 1908.
[134] Cass. req., May 1, 1911. Contrast with British rule.
[135] Cass. civ., July 27, 1905; and cf. id., Feb. 21, 1912. Contrast with British and German rules.
[136] Cass. civ., Dec. 22, 1909; cf. Cass. req., Feb. 17, 1908.
[137] Cf. Cass. req., Dec. 23, 1903; id., Feb. 19, 1908; id., July 8, 1902; id., May 1, 1911. Contrast with British rule.
[138] Cour d'Appel d'Angers, Aug. 11, 1902.
[139] Tribunal d'Avranches, Feb. 8, 1907.

physician or surgeon selected by the workman himself[140] will be attributed to the accident, *quaere.*

A contagious disease contracted at a hospital where a workman has been sent by his employer for treatment after an accident may be attributable to the accident, but only where the risks of contagion at the hospital were greater than would otherwise have been incurred by the workman.[141]

Death by suicide will be considered the result of an accident if the mental disturbance and pain resulting from the accident are the direct cause of the workman's ending his life.[142]

Where a workman, whose leg had been broken in a work accident but had sufficiently healed to enable him to return to work, fell lightly on level ground and suffered a renewal of the old injury, it was held that possibly such second injury might have been due to the insufficient consolidation of the old fracture rather than to the later accident, but that the burden was upon the victim to prove the relation of cause and effect between the old fracture and the new injury.[143]

Where a disease follows the original injury it will not be attributed to the accident unless it be found that it was the direct and immediate consequence of the accident. Accordingly where, as the result of an accident, a vigorous and healthy workman was confined to bed in a *milieu* favorable to infection, which confinement resulted in a state of great weakness and severe depression, in the course of which he contracted tuberculosis, from which he died, it was held that the death was not the result of the accident.[144]

After an accident the injured workman must submit to all reasonable surgical operations;[145] and if he refuses the consequences of such refusal will not be deemed the result of the accident.[146] Where he refuses all care for a curable injury any subsequent incapacity will be deemed the result of such refusal and not of the accident.[147]

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[140] Under the French law the workman may select the physician or surgeon, and yet the employer must pay the charges, with the consequence that a very inferior grade of physicians and surgeons get a large proportion of the cases.

[141] Tribunal de Rouen, May 25, 1905.

[142] Cass. req., Oct. 25, 1905.

[143] Cass. req., Jan. 28, 1903.

[144] Cass. civ., Feb. 21, 1912; to same effect, id., Nov. 8, 1909. Contrast with British and German rules.

[145] As to when refusal to submit is reasonable, see Cass. civ., Dec. 16, 1912; Cour d'Appel de Besancon, Nov. 27, 1901.

[146] Cass. req., Feb. 15, 1910.

[147] Cour d'Appel de Rennes, Dec. 10, 1901.

"ARISING OUT OF AND IN THE COURSE OF THE EMPLOYMENT."

To comprehend this phrase it is necessary to obtain a clear idea of the meaning of its several terms and then to study its practical application to accidents happening under all common circumstances. Logically it would be convenient to consider, first, When does an accident arise out of the employment? and, second, When does it arise in the course of the employment? But the decisions do not lend themselves to such treatment of the subject without undesirable repetition, for the reason that in a very large proportion of the decided cases both questions were involved. Therefore the course followed herein will be to define, first, what is meant by "arising out of;" second, what is meant by "in the course of;" third, what is meant by "the employment" (or, in the terms of the French and German laws, "the work"); and then, under appropriate titles, to take up the various categories of accidents, more or less connected with the employment, and therewith present the decisions upon the double question whether accidents happening under such circumstances arise out of *and* in the course of the employment. It must always be borne in mind that these two requirements are conjunctive* and that an affirmative answer to one branch of this question does not imply a like answer to the other.

"ARISING OUT OF." Under this title is considered only the definition of what is meant by the words "arising out of."

Under the BRITISH law the accident must "arise out of" the employment. These words point to the origin or cause of the accident, and are descriptive of its character or quality.[1] To arise out of the employment the accident must arise out of a risk reasonably incidental to the employment.[1a] A risk may be incidental to the employment, when it is either an ordinary risk directly connected with the employment, or an extraordinary or "special" risk which is only indirectly connected with the employment owing to the special nature of the employment.[2] A special risk is one which imposes a greater danger upon the employee than upon an ordinary member of the public;[3] or, something substantially beyond the normal risk which ordinary people run.[4]

It is not enough that the accident would not have happened if the victim had not been engaged in the particular employment or if he had not been at that particular place; it must also be shown that it arose because of something he was doing in the course of his employment or because of the nature of his employment he was exposed to some peculiar danger. And, on the other hand, a risk is not incidental to the employment, if it is not due to the nature of the employment, as e. g., where it is a risk common to the public and not aggravated by the employment, or if it is an added peril due to the conduct of the workman himself.[5]

The employment need not be the proximate cause of the accident.

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[1] Fitzgerald v. Clarke (1908), 1 B. 197.
[2] Cf. Craske v. Wigan (1909), 2 B. 35.
[3] Sheldon v. Needham (1914), 7 B. 471, 474.
[4] Andrew v. Failsworth Soc. (1904), 6 M.-S. 476.
[5] Plumb v. Cobden Mills (H. L., 1913), 7 B. 1.

* Pierce v. Boyer-Van Keenan Co. (Neb., 1915), 156 N. W. 509; Hopkins v. Michigan Co. (Mich., 1915), 150 N. W. 325; McNichol's Case (1913), 215 Mass. 497.
[a] Cf. Bryant v. Fissell (1913), 84 N. J. L. 72; McNichols' Case (1913), 215 Mass. 497; Hoenig v. Industrial Commission (Wisc., 1915), 159 Wisc. 646.

It is enough that it was one of the contributory causes without which the accident which actually happened would not have happened.[6]

Under the GERMAN law there must be a causal relation between the work and the accident. That relation may be either direct or indirect. And the work need not be the sole cause, it being sufficient that it is a contributory cause. But the work must contribute appreciably, it not being sufficient that it has some remote causal relation with the accident. And there must be something more than a local relation; for presence at the workplace may furnish merely the opportunity for an accident without having anything to do with its causation. Although risks special to and charcteristic of trade activities were the motive for the law, yet the accident need not result from any such special risk, it being sufficient that it has been actually caused by the work, though resulting from a "risk of everyday life." Consequently such common accidents, at the workplace and during the course of the work, as slips and falls on level floors and pavements, falling on ordinary stairs, bumping into common obstructions, etc., are deemed to arise out of the work.[7] But there are some common risks which will not be deemed to have sufficient causal relation with the work, unless the work entails special exposure thereto.[8] And where a workman goes to a place where he has nothing in connection with his work to do and thereby suffers an accident, he becomes the victim of a self-created risk and not of a risk of the work.[9]

Under the FRENCH law the accident must occur "*par le fait du travail ou a l'occasion du travail,*" which, crudely translated, means that it must be caused or occasioned by the work. Injuries inflicted upon workmen, during the time and at the place of work, directly by the machinery, motive power, etc., employed in the enterprise, occur "*par le fait du travail,*" no matter what other causes may have contributed.[10] Other accidents of which the work is the occasion occur "*a l'occasion du travail.*"[11] Every accident occurring "during the time and at the place of work," unless due to the action of forces of nature, is "occasioned" by the work.[12] And every accident occurring during such time and at such place is presumed to be so "occasioned" in the absence of proof to the contrary.[13] There need be no causal relation between the particular occupation of the individual workman and the accident, provided the accident occurs during the time and at the place of work.[14]

It is not necessary that the work be the exclusive or immediate cause of the accident, it being sufficient that the accident is due wholly or partly, directly or indirectly, to the work.[15]

"IN THE COURSE OF." Under this title is explained what is meant by the words "in the course of;" and in addition are presented

[6] Clover, Clayton & Co. v. Hughes (H. L., 1910), 3 B. 275.

[7] Cf. Handbuch, pp. 76, 89, 90; also Imperial Insurance Office, "Grosser Senat," Feb. 26, 1914, cit. "Bulletin des Assurances Sociales," April, 1914, p. 26.

[8] Cf. particularly "Forces of Nature," "Risks from Insects, etc.," "Street Accidents," "Quarrels Among Co-employees," "Larking," etc., post.

[9] Cf. Handbuch, p. 106.

[10] Cass. civ., Feb. 17, 1902; id., July 8, 1903. But if the accident be intentionally brought on by the victim, there is no right to compensation; Act of April 9, 1898; Art. 20.

[11] Cass. civ., Feb. 23, 1902; id., Aug. 4, 1903.

[12] Cass. civ., Jan. 24, 1912; id., July 19, 1911; id., Dec. 27, 1911. This broad rule is a very recent development, which may be considerably modified and limited before it becomes firmly established. Apparently it overrules many earlier decisions, which are nevertheless cited hereinafter, though now of doubtful authority, because they may still be good law and at the least serve to illustrate the development of principles.

[13] Cass. req., Oct. 25, 1910.

[14] Cass. civ., April 20, 1912.

[15] Cass. civ., April 20, 1912.

some general applications of the principles relative to "time" and "place," leaving more particular applications for consideration under later titles.

Under the BRITISH law the accident must not only arise "out of" but must also arise "in the course of" the employment. The latter words relate to the circumstances under which an accident arising out of the employment must occur. They point to the time, place and other circumstances under which it takes place.[1] [a]

Time and place are critical circumstances from which to determine whether or not an accident has occurred in the course of the employment.

It is the time of the employment and not only the time of the work that is covered.[b] The moment of beginning or ending the actual work is not the true test of the time when employment commences or ceases.[2] For example, upon his going to work a reasonable time must be allowed for the workman to get on the premises and to the place where he is to do his work, and if during that time he is doing something for the benefit of his employer as well as of himself he is "in the course of" his employment. Therefore where a workman who had arrived by the only convenient train some twenty minutes before the time for the commencement of work and was injured on his employer's premises while proceeding towards the timekeeper's office to deposit his time ticket before going to a mess cabin to get some refreshments, it was held that the accident arose in the course of the employment.[3] And the same was held where a lighterman, sent to bail out a barge near a certain wharf, arrived at the wharf while the tide was unfavorable to his reaching the barge, and was injured while waiting for the tide to rise sufficiently for him to get to work.[4]

The workman has also a reasonable time to leave his employer's premises after suspension of work, what is a reasonable time being a question of fact to be determined by the circumstances in each case.[5] Where, however, a workman is suspended and, instead of leaving, "hangs around" and is injured, the accident does not arise in the course of the employment.[6]

Where a workman's business is to travel, all the time properly occupied in travel is covered.[7]

The employment of a domestic servant[8] and of a sailor[9] is continuous, and consequently all hours of the day and night are included in the time of employment.

Where a man with a cart was employed to haul goods to a railroad station, his time of employment, it was held, *obiter,* included the time of coming from and going to the stable.[10] Where an engine driver, after

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[1] Fitzgerald v. Clarke (1909), 1 B. 197.
[2] Cf. "Getting to and from Work," post, p. 35; and "Journeys, Errands, etc.," post, p. 44.
[3] Sharp v. Johnson (1905), 7 M.-S. 28; to same effect, cf. Fitzpatrick v. Hindley Co. 1901), 3 M.-S. 37.
[4] May v. Ison (1914), 7 B. 148.
[5] Cf. Smith v. South Normanton Co. (1903), 5 M.-S. 14.
[6] Cf. Horsfall v. S.S. "Jura" (1913), 6 B. 213; Smith v. South Normanton Co. supra.
[7] Dickinson v. Barmack (1908), 124 Law Times 403; and cf. "Journeys, etc.," post, p. 44.
[8] Aldridge v. Merry (1913), 6 B. 450.
[9] Cf. Kitchenham v. S.S. "Johannesburg" (H. L., 1911), 4 B. 311.
[10] Caledonian R'y Co. v. Bathgate (1903), 39 Sc. L. R. 246. See also under "Journeys, Errands, etc.," post, p. 44.

[a] Cf. McNichols' Case (1913), 215 Mass. 497.
[b] Cf. Terlecki v. Strauss (1914), 85 N. J. L. 154 (girl combing hair in factory at end of work); Milwaukee v. Althoff (1914), 156 Wisc. 68 (walking on street to designated place of work after reporting to foreman); Milwaukee Co. v. Industrial Commission (1915), 160 Wisc. 247 (engineer riding on engine to office after being relieved); Brown v. City of Decatur (1915), Ill. App. 147 (changing shoes preparatory to work).

being released from duty, was killed while proceeding from his engine to the office to report, it was held that the accident arose in the course of his employment.[11] And the same was held where a bailiff, in charge of some extensive farm premises, whose duties usually ceased at 8 P. M., when he locked up and retired, was injured while making an extra round of inspection late one night.[12] But the contrary was held in the following cases: Where a shepherd, newly engaged by a farmer, was killed while being transported with his family and furniture in the farmer's wagon to a new residence convenient to his new place of work.[13] Where a porter, who had been temporarily employed in loading a van and was promised a job at unloading if he would be at its destination upon its arrival, suffered an accident on the way there.[14] Where a workman was set upon and injured by strikers about seven minutes after leaving his employer's establishment.[15]

As to the place, the accident must occur within the sphere or area of the injured workman's employment.[16]

Under the GERMAN law the accident must occur "in the course of the work." To comply with that condition the accident must occur while the workman is doing something intended directly or indirectly to serve a purpose of his employment, without reference to time or place.[17] Where the objects of the actions are mixed, it is requisite and at the same time sufficient that they were intended appreciably to serve such a purpose.[18]

Time and place, however, are critical circumstances from which to determine whether an accident has occurred in the course of the work.

The time of work includes the whole time a workman spends at the "workplace"[19] for a purpose connected with the work.[20] It therefore includes not only the time engaged in active operations, but also the rest periods, proper intermissions and reasonable periods before and after work during which the workman is geting ready, preparing tools, etc., putting them away, cleaning up, getting his pay, etc.[21] Accordingly in the following cases the accidents were held to have occurred in the course of the work: Where a workman on a building job, after finishing his day's work, cleaned up and changed his clothes, and then was hurt while going upstairs to get his tools.[22] Where a workman after getting his pay at the end of a day's work was injured while waiting for a comrade to do the same.[23] Where a laundry girl, after her day's work, took off her wet stockings and was hurt while running them through a wringer.[24] Where a foundryman, at the end of a day's work, while washing in a pond within the workplace, fell in and was drowned.[25] But where a workman an hour and a half after the end of work returned to his workplace to get his coat

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[11] Todd v. Caledonian R'y (1899), 39 Sc. L. R. 781. See also under "Getting to and from Work," post, p. 35.
[12] Pepper v. Sayer (1914), 7 B. 616.
[13] Whitbread v. Arnold (1908), 1 B. 317.
[14] Perry v. Anglo-American Co. (1910), 3 B. 310.
[15] Poulton v. Kelsall (1912), 5 B. 318. See also under "Intentional Assaults," post, p. 53.
[16] Cf. "Sphere of Employment," under title "The Work," post, p. 24, and Poulton v. Kelsall, supra.
[17] Handbuch, p. 88.
[18] Id.
[19] "Workplace" defined, post, p. 22.
[20] Handbuch, p. 89.
[21] Id., pp. 94-95; and under various titles, post.
[22] Id., p. 94.
[23] Id.
[24] Id., p. 95.
[25] Id.

and suffered an accident there, it was held that such accident did not occur in the course of the work.[26]

Away from the "workplace" a workman has a "reasonable" time for the performance of his duties; and an accident occurring while he is going about his work outside of such reasonable time is not in the course of the work.[27]

The accident must also occur at a place where the workman is at the time for a purpose connected with his employer's business. So long as he is anywhere within the "workplace" or "work-district," during proper hours, a workman is presumptively in the course of his work,[28] though, even therein, if he goes into a forbidden place, or in moving from place to place follows a forbidden route, there is a presumption that it was not for a purpose of the business.[29]

But outside the workplace or work-district the workman must act reasonably,[30] and if, for example, he follows an improper route on an errand or journey, his is not in the course of his work.[31]

The words "workplace" and "work-district" mean, not the exact locality where the individual workman is assigned to work, but the whole place or all the places under the control of his employer for the single enterprise in which he is employed.[32] A group of roads under a public board is an illustration of what is meant by a work-district.[33] Where a steamer and a lighter are tied together they may constitute one workplace. When a railroad section hand steps on the road's right of way he is at the workplace, though far away from the exact locality where he is to work. A mine or factory and a short spur railroad connecting it with a main line may constitute one workplace; but not where the spur line is long and operated separately. Under some circumstances the route from a railway or factory into a barracks provided close by for the railway's or factory's employees may be part of the workplace. All the roads under the charge of a single public board constitute one work-district. But where a municipality owns and operates both a mine and a forest, they are separate workplaces.[34]

In the FRENCH statute there is no requirement that the accident shall occur in the course of the work; but the courts have established a rule that it must occur during the time and at the place of work, the responsibility of the employer beginning at the place and moment where and when his authority over the workman begins, and ending where and when such authority ends.[35] Being judge-made law, however, this rule admits of exceptions. Where a railway trackwalker was allowed to carry home with him signal bombs used in his work, and was there injured, when starting to his work, by the explosion of one of them, the accident was held to have been occasioned by the work,[36] though according to

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[26] Handbuch, p. 95.

[27] Id., p. 103; and cf. "Journeys, etc.," p. 45.

[28] Cf. Handbuch, p. 89. This is only a presumption; and where the workman goes into a part of the workplace where he has nothing to do the risks encountered may have no connection with the work; id., p. 106.

[29] Cf., id., p. 79.

[30] Id., p. 99.

[31] Id., p. 101; and cf. "Journeys, etc.," post, p. 45; and "Rest in Employer's Lodgings and Strange Places," post, p. 48.

[32] Id., p. 89.

[33] Id.

[34] Id., pp. 90-91.

[35] Cass. civ., Feb. 17, 1902.

[36] Cass. civ., June 24, 1905. But see Cass. civ., June 15, 1911, wherein under somewhat similar circumstances the accident was held to have occurred during the time and at the place of work.

general definitions it occurred neither during the time nor at the place of work.

The time of work begins as soon as the workman is at the disposition of his employer and ends when he regains his liberty.[37] It therefore begins upon his entrance into his employer's establishment and continues so long as he remains there subject to the employer's surveillance and control; and it includes the periods of rest and other intermissions so long as the workman remains within the establishment either with the employer's permission or pursuant to his orders.[38] Where a workman is sent outside the employer's establishment the time of work is the time spent on duty or reasonably occupied in the employer's business.[39]

The "place of work" means, generally, the employer's entire establishment, together with its dependencies, or all the places where he carries on a single enterprise;[40] but for a railroad stationman, yardman, etc., it does not include the entire road, but only the station, yard, etc., in which he is employed.[41] And a workman is at the place of work so long as he remains within such place, as above defined, and subject to the direction and control of his employer; and no departure therein by the workman from his particular post of duty releases the employer from his responsibility, though the workman may thereby incur the penalty for inexcusable fault.[42] Outside of his employer's establishment a workman is at his place of work wherever he may go or be by his employer's orders and for the needs of the business, but not elsewhere.[43]

The following cases illustrate the general application of the foregoing principles. Where a laborer on a coal barge, at the end of his day's work, having descended into a small boat tied alongside, to wash up, accidentally fell into the river and was drowned, it was held that the accident occurred at the place and during the time of work.[44] But the contrary was held where, at the termination of the day's work, one boy got "larking" with another, and, to escape retaliation, ran away and was hurt in getting out by the balcony of an upper window;[45] where a man, calling at a factory for that purpose, secured employment to commence the next morning, but, instead of leaving, loitered around and got hurt;[46] where a worker on scaffolding, when leaving for the day with his employer, wanted to go back to fasten some loose ropes and was forbidden to do so, but nevertheless did go back later and suffered an accident;[47] and where a foreman, sent to another town to do some work, after finishing it went to the postoffice to send his employer notice of completion, and after leaving was injured on the street.[48]

THE WORK. (THE EMPLOYMENT.) Under this title is considered only what constitutes the work or employment out of and in the course of which the accident must arise.

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[37] Cass. req., Feb. 13, 1912.
[38] Cass. civ., Dec. 27, 1911; see cases under "Intermissions During Work," post, p. 42.
[39] Cf. "Rest in Employer's Lodgings and Strange Places," post, p. 43, and "Journeys, etc.," post, p. 47.
[40] Cass. req., Feb. 18, 1908; Cass. civ., Feb. 17, 1902; id., July 8, 1903.
[41] Cass. civ., March 3, 1903; Cass. req., July 6, 1910; and see Cass. civ., April 3, 1913.
[42] Cass. req., Feb. 18, 1908; Cass. civ., Feb. 17, 1902; id., July 18, 1903; id., July 18, 1911; id., Dec. 27, 1911. For inexcusable fault the rate of compensation may be reduced one-half .
[43] Cass. civ., Feb. 13, 1906; id., Aug. 6, 1907; id., July 17, 1907; and cf. "Journeys, etc.," post, p. 47.
[44] Cass. req., May 2, 1908.
[45] Cass. req., March 25, 1905.
[46] Cass. civ., Jan. 15, 1913.
[47] Cass. req., May 20, 1903.
[48] Cass. req., July 4, 1905.

Because the French and German compensation laws, similarly to many of our American statutes, are restricted in scope and apply only to certain specified industries or trades, many difficult questions arise thereunder as to whether or not given accidents have occurred in the course of work in or incidental to some specific industry or trade. Such questions have been substantially eliminated under the British law by its extension, by the act of 1906, to approximately all employments under contract of service. Because such questions under the French and German laws are not of general interest they will be ignored herein, and attention will be confined to the general question of what constitutes the work or employment of any employee, regardless of the particular nature of his occupation or his employer's trade or business.

Under the BRITISH law the accident must arise out of something done or omitted by the workman while acting within the "sphere of his employment." However, an accident may arise out of the employment though at the time the victim is doing something ouside the sphere of his employment, where the accident does not arise out of such unauthorized action but out of something done or omitted while acting within such sphere.[1]

A workman goes outside the sphere of his employment[a] and his risks of accident are not covered when he does something different in kind from anything he was required or expected to do, or which is put outside the range of his service by a genuine prohibition,[b] or when he goes into a territory with which he has nothing to do.[2] However, the sphere of employment is to be liberally construed;[c] and, consequently, if a workman suffers an accident while doing an act not so remote from his ordinary duties as to be clearly outside the scope of his employment he does not lose the protection of the law.[3] Where a workman follows a prevailing custom in doing something under exceptional circumstances, which ordinarily would be outside the scope of his duties, he is acting within the sphere of his employment.[4] And where, in an emergency, a workman does something in his employer's interests ordinarily outside the scope of his employment a resulting accident will be deemed to arise out of and in the course of the employment.[5]

Not the violation of every rule or order carries the workman outside the sphere of his employment, but only of a rule or order which distinctly separates and defines his sphere of work.[6] An order which merely prescribes the method of work or the exact spot for work, does not so define the workman's sphere of employment that a departure therefrom, solely for the purpose of the work, relieves the employer.[7] To limit service a rule must be known to the victim and be enforced,[8] [d] though the fact that it is often violated on the sly does not make it an unenforced

[1] Smith v. Fife Co. (H. L., 1914), 7 B. 253.
[2] Plumb v. Cobden Mills (H. L., 1913), 7 B. 1; and cf. "Acts Done for the Workman's Own Purpose," post, p. 34.
[3] Cf. Greer v. Lindsay Thompson (1912), 5 B. 586.
[4] Baird v. Robson (1914), 7 B. 925.
[5] Cf. cases cited under "Acts of Devotion," post, p. 29.
[6] Cf. Whitehead v. Reader (1901), 3 M.-S. 40.
[7] Harding v. Brynddu Co. (1911), 4 B. 269; Wright v. Scott (1912), 5 B. 431.
[8] Richardson v. Denton Co. (1913), 6 B. 629; McKee v. Gt. Northern R'y (1908), 1 B. 165.

[a] Cf. Spooner v. Detroit Co. (Mich., 1915), 153 N. W. 657. Sphere of employment defined, Mann v. Glastonbury Co. (1915), 90 Conn. 116.
[b] Cf. Smith v. Corson (1915), 87 N. J. L. 118; Reimers v. Proctor Co. (1914), 85 N. J. L. 541.
[c] State ex rel. v. District Court of St. Louis Co. (1915), 129 Minn. 176.
Cf. Rayner v. Sligh Co. (1914), 180 Mich, 168.

rule.[9] Where a workman is ordered by a superior to do something contrary to general rules or orders, acts done in compliance with such particular order will be deemed within the sphere of employment.[10] And where a handy boy in a factory, doing nothing for the moment, was ordered by one of his employers to "find a job," his sphere of employment was held to have been so enlarged thereby as to include the cleaning of dangerous machinery that otherwise he would have had no business to touch.[11]

In the following cases, because the victims were doing something clearly outside the scope of their duties, the accidents were held not to have arisen out of and in the course of the employment: Where a foreman, employed with a gang to stack bundles by hand, took a rope and, winding it around some revolving shafting near the ceiling, used it as a hoist, and in consequence was injured.[12] Where a miner who had no business to set off blasts, in the absence of the shot-firer, and with a detonator of his own, set off a blast and was injured thereby.[13] Where a house surgeon at an infirmary volunteered to submit himself to an experiment with x-ray apparatus and was burned.[14] Where a boy employed to piece ends of yarn in a spinning mill and not to touch machinery at all, was injured while cleaning machinery in motion.[15] Where a workman, employed to bring cloth to a mangle and then carry it away, and also, at certain fixed stoppage times, to aid a foreman clean the machinery, was injured while inside the guards cleaning the machinery while it was in motion.[16] Where a "box-minder" in a woolen mill, whose duty it was to report to the foreman if a machine did not work properly and never to touch it himself, crushed his fingers in endeavoring to tighten up some rollers on the machine when they were out of order.[17] Where a porter, ordered to clean windows on the top floor of a hospital, met with an accident trying to clean the top of an elevator.[18] Where a girl employed on one machine scratched her hand on another sort of machine, it not being explained how she came to be at the latter machine.[19] Where a girl, employed to pick rubbish out of coal as it moved along a belt to the wagons, and who knew she had no business to touch the engine which moved the belt, was injured in starting the engine during a momentary absence of the man in charge.[20] Where a carter, whose duty it was to walk behind a heavy five-horsed truck to put on the brakes when needed, mounted in front to chat with the driver, and was injured jumping off in haste to run back to the brakes.[21] Where a carter, whose duty it was to stay by his truck, leaving it backed up against a railway embankment went down

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[9] Barnes v. Nunnery Colliery Co. (H. L., 1912), 5 B. 195.

[10] Statham v. Galloways (1900), 2 M.-S. 149; Geary v. Ginzler (1913), 6 B. 72; Brown v. Scott, 1 M.-S. 11; Tobin v. Hearn (1910), 2 Ir. R. 639.

[11] Lane v. Lusty (1915), 8 B. 518.

[12] Plumb v. Cobden Mills, supra; and cf. Edwards v. International Co. (1899), 5 M.-S. 21.

[13] Kerr v. Baird (1911), 4 B. 397; distinguished, Smith v. Fife Co. (H. L., 1914), 7 B. 253; and cf. Corbett v. Pitt (1915), 8 B. 466. To similar effect, cf. McAllan v. Perthshire Council (1906), 43 Sc. L. R. 592; Wheelan v. Moore (1909), 2 B. 114; Burns v. Summerlee Co. (1913), 6 B. 320.

[14] Curtis v. Talbot Infirmary (1911), 5 B. 41.

[15] Naylor v. Musgrave Co. (1911), 4 B. 286; to similar effect, Jenkins v. Harrison (1911), 4 B. 194; Davies v. Crown Co. (1913), 6 B. 649; and cf. Marriott v. Brett (1911), 5 B. 145.

[16] McDiarmid v. Ogilvey (1913), 6 B. 878; and cf. Smith v. Stanton Co. (1913), 6 B. 691; Hopley v. Pool (1915), 8 B. 512.

[17] McCabe v. North (1913), 6 B. 504.

[18] Whiteman v. Clifton (1913), 6 B. 49.

[19] Cronin v. Silver (1911), 4 B. 221.

[20] Losh v. Evans (1902), 5 M.-S. 17.

[21] Reevie v. Cumming (1911), 5 B. 483.

the tracks to see a foreman, and was killed by a train.[22] Where an engine driver left his engine, crossed some tracks to get a book from a friend, and was injured on the way back.[23] Where a workman in charge of two cranes in one part of a factory was found killed by a crane in another part of the factory, there being no evidence as to why he had gone there.[24] Where a ship's fireman, having come aboard in the night, drunk, was found dead the next morning in a part of the ship where he had no business to go.[25] Where a collier, at work in a special stall in a mine, left it long before the end of his shift, walked some distance away to ascertain the time, and was killed on the way back.[26] Where a messenger who was sent to a branch post-office to get a postal order, not being able to obtain it there, went on to the general post-office, and on the way slipped on a banana skin and was injured.[27] Where a seaman, for whom night lodgings were provided ashore while his ship was in port, met with an accident trying to get aboard the ship late one night.[28] Where a carter's duty was to help unload his own wagon and he was injured helping to unload other wagons of his employer's, in order that the persons whose business it was to unload them could help the consignee store the goods in his warehouse.[29]

On the other hand, in the following cases the workmen were held not to have departed from the sphere of employment:* Where an employee whose duty it was merely to weigh and record articles sent out from a factory was injured while helping workmen to carry a heavy article to the weighing machine.[30] Where a laborer, having nothing to do with machinery, was fatally injured assisting a machine man to replace some loose belting on machinery in motion.[31] Where a boy, employed to grease the wheels of railway trucks, was standing near a switch in a station yard, saw an engine approaching, thought it necessary to throw the switch, did so and thereby suffered injury.[32] Where the driver of a motor-van suffered an accident trying to repair the machinery, though that was not his duty in general.[33] Where a mason's laborer, employed to clean the ceiling of an arch of a doorway from the inside, was killed falling from some scaffolding on the outside, it being inferred that he mounted that scaffolding for some purpose connected with his work.[34] Where a general handy boy, who was told untruly by another workman that the foreman wanted him to clean some machinery in motion, proceeded to do so and was injured.[35] Where a brakeman in charge of one train which was shunting another was killed in attempting to pass from his train to the other, it being inferred that his purpose was to set a switch at the head of the joint trains, which some one of the brakemen had to set.[36]

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[22] Morris v. Rowbotham (1915), 8 B. 157.
[23] Reed v. Gt. Western R'y (H. L., 1909) 2 B. 109; and cf. Dyhouse v. Gt. Western R'y (1913), 6 B. 691.
[24] Millers v. North British Co. (1909), 2 B. 80.
[25] O'Brien v. Star Line (1908), 1 B. 177.
[26] Warren v. Hedley's Co. (1913), 6 B. 136
[27] Smith v. Morrison (1911), 5 B. 161.
[28] Griggs v. S.S. "Gamecock" (1913), 6 B. 14.
[29] Sinclair v. Carlton (1914), 7 B. 937.
[30] Goslan v. Gillies (1907), 44 Sc. L. R. 71; and cf. other cases cited under "Acts of Favor." post, p. 30.
[31] Menzies v. M'Quibban (1900), 37 Sc. L. R. 526; and cf. Cambrook v. George (1903), 5 M.-S. 26.
[32] Harrison v. Whitaker (1899), 2 M.-S. 12.
[33] Partridge v. Whiteley (1915), 8 B. 53.
[34] Roberts v. Trollop (1914), 7 B. 678.
[35] Brown v. Scott (1899), 1 M.-S. 11.
[36] Evans v. Astley (H. L., 1911), 4 B. 319.

*Cf. *Wendt* v. Industrial Commission (1914), 80 Wash. 111.

In the following cases violations of rules or orders were held to have carried the injured workmen outside the sphere of employment.: Where a boy in a colliery, to get to the place where he was about to work, in violation of rules rode in an empty tub hauled on an endless chain, and was injured in consequence.[37] Where a collier suffered an accident by riding from one part of the mine to another on the coupling between two trams, in violation of colliery rules.[38] Where a flagman, employed to walk in front of a traction engine, in violation of orders rode on the drawbar and was injured in consequence.[39] Where a mine worker injured his head by riding out of the mine in a hutch, against rules.[40] Where a boy, employed to stand behind a machine and put in a basket the skeins of wool that came out of the machine rollers, was expressly forbidden to go around to the other and dangerous side of the machine, but nevertheless did so and attempted to clean fluff off the rollers while in motion, and in consequence met with an accident.[41] Where a collier, ordered to cut at the head of the road in the mine, left that place and went some distance back to cut coal at a place where it was forbidden to cut coal, and thereby caused a fall of the roof which killed him.[42] Where a workman, employed to dig flints from the surface of a bank, was forbidden to dig in a certain trench, but nevertheless worked in the trench, because flints were more easily got there, and was injured by a cave-in.[43] Where an ordinary miner, who was forbidden by law and rules to set off blasts, nevertheless did so and was thereby injured.[44] Where a person employed to do unskilled labor and forbidden to touch machinery, was injured by a machine while attempting to clean it.[45] Where a mate of a ship, being drunk, was ordered by the captain to go to his room, but instead went elsewhere in the ship and suffered an accident.[46] Where a pitboy was suspended and ordered to the pitbottom, but remained in the working part of the mine and was there injured.[47].

On the other hand, in the following cases it was held that violations of rules or orders did not carry the workmen outside the sphere of employment: Where a carpenter, who had to sharpen tools on a grindstone, was forbidden to touch the machinery which rotated it, but nevertheless did so and was injured.[48] Where a workman employed to oil machinery, though forbidden to oil it when it was in motion, nevertheless did so and was hurt.[49] Where a mechanic operating a dangerous machine was forbidden to operate it sitting down, but nevertheless did so and was injured in consequence.[50] Where the shot-firer in a mine, who was forbidden to set off his shot until he had received directions, nevertheless did so, and

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[37] Barnes v. Nunnery Colliery Co. (H. of L., 1912), 5 B. 195; followed in Herbert v. Fox (1915), 8 B. 94; to same effect, Bates v. Mirfield Co. (1913) 6 B. 165.

[38] Powell v. Brynddu Co. (1911), 5 B. 124.

[39] McKeown v. McMurray (1911), 45 Ir. L. T. 190.

[40] Kane v Merry (1911), 4 B. 379.

[41] Hopley v. Pool (1915), 8 B. 512; but cf. Whitehead v. Reader (1901), 3 M.-S. 40.

[42] Weighill v. South Hetton Co. (1911), 4 B. 141; to similar effect, Traynor v. Addie (1911), 4 B. 357; Tomlinson v. Garratt's (1913), 6 B. 489; but cf. Conway v. Pumpherston Co., and Harding v. Brynddu Co., post, p. 28.

[43] Parker v. Hambrook (1912), 5 B. 608.

[44] Kerr v. Baird (1911), 4 B. 397. But cf. Joyce v. Wellingborough Co. (1911), 5 B. 126, and cases cited under note 13, supra.

[45] Lowe v. Pearson (1889), 1 M.-S. 5; to same effect, Jenkins v. Harrison (1911), 4 B. 194; Marriott v. Brett (1911), 5 B. 145; and cf. Dougal v. Westbrook (1913), 6 B. 705.

[46] Horsfall v. S.S. "Jura" (1913), 6 B. 213; and cf. Murphy v. Cooney (1913), 7 B. 962.

[47] Smith v. South Normanton Co. (1903), 5 M.-S. 14.

[48] Whitehead v. Reader (1901), 3 M.-S. 40; but cf. Hopley v Pool (1915), 8 B. 512.

[49] Mawdsley v. Westleigh Co. (1911), 5 B. 80.

[50] Blair v. Chilton (H. L., 1915), 8 B. 324; and cf. Wright v. Scott (1912), 5 B. 481.

was thereby injured.[51] Where a collier, traveling to work on his employer's train, in violation of orders got out on the footboard while the train was still in motion and was injured in consequence.[52] Where a porter, seeking passengers' baggage to carry, which was the purpose for which he was employed, was injured jumping on the footboard of an incoming train, while it was still in motion, in violation of rules and warnings.[53] Where a young machine operator in a boot factory, where in changing from one machine to another was against rules, being given a defective sole to take to another room to be remoulded, went to that other room and, finding the operator of the proper machine absent, attempted to do the work on that machine himself, and thereby met with an accident.[54] Where a collier, to get a needed pick, went into a forbidden part of the mine and was injured in consequence.[55] Where a miner drilling a hole into a lower level to let out an accumulation of gas therein, in violation of orders went into the lower level to see if the drill was coming through properly, and was suffocated.[56] Where a collier ordered not to cut where he was but to move some few feet around a corner, moved as directed but later moved back some distance towards the forbidden point, and was injured in consequence but not by the danger anticipated.[57]

Under the GERMAN law the work in the course of and out of which the accident must arise consists of those activities the object of which is to serve a purpose of the employer's business.[58] It is sufficient, however, that the activity was appreciably, though not exclusively, and only indirectly intended to serve such a purpose.[59] His work includes not only the exact task assigned to the workman but also all acts reasonably incidental or supplementary to it.[60] Actions without orders or against orders and illegal acts may be intended to serve the ends of the trade and therefore may constitute the work; but the fact that an act was known to be forbidden or illegal gives rise to a presumption against such intention.[61] Acts intended to disturb or interfere with the trade ends (such as acts of *sabotage,* etc.) are never part of the work.[62]

Under the FRENCH law "the work" which must cause or occasion the accident includes not only the particular task assigned to the victim but also all the means put in motion by the employer in the enterprise in which the victim was employed—i. e., more specifically the machinery, motive power, etc., of the employer's establishment.[63] In other words, it is sufficient if the *employer's* work causes or occasions the accident. The practical effect of this rule is greatly to increase the employer's responsibility and the workman's irresponsibility[64] within the employer's establishment, whereas outside of such establishment a workman must keep strictly to his particular task, as under the British law.

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[51] Corbett v. Pitt (1915) 8 B. 466; and cf: Smith v. Fife Co. (H. L., 1914), 7 B. 253; but cf. Kerr v. Baird (1911), 4 B. 397.
[52] Watkins v. Guest (1912), 5 B. 307; cf. under "Getting to and from Work," post, p. 37.
[53] McWilliam v. Gt. Northern R'y (1914), 7 B. 785.
[54] Tobin v. Hearn (1910), 44 Ir. L. T. 197.
[55] Conway v. Pumpherston Co. (1911), 4 B. 392.
[56] Harding v. Brynddu Co. (1911), 4 B. 269.
[57] Jackson v. Denton Co. (1914), 7 B. 92.
[58] Handbuch, p. 88.
[59] Id. Cf. also p. 99.
[60] Id., p. 89.
[61] Id., p. 93.
[62] Id.
[63] Cass. civ., Feb. 7, 1902; id., July 8, 1903; id., July 19, 1911; Cass. req., Feb. 18, 1908.
[64] This effect is mitigated by a statutory provision that the rate of compensation may be reduced one-half for "inexcusable fault."

ACTS OF DEVOTION. Under the BRITISH law where in an emergency a workman does something outside the sphere of his employment in his master's interest, an accident due thereto is deemed to arise out of and in the course of his employment. It was so held in the following cases: Where a workman was hurt in his employer's works trying to stop a runaway horse, though the moment before he had been riding against orders, on the tram the horse was drawing;[1] and where a longshoreman employed on a dock was injured trying to rescue a fellow servant lying asphyxiated in the hold of a ship tied alongside.[2 a] But the contrary was held where a canalboatman, who was ordered never to steer, was injured while steering at the request of the steersman, who had undertaken to drive in the absence of the driver,[3] and where a workman, on his way to work with some comrades, was hurt trying to rescue one of the latter from a position of peril into which he had got himself by interfering with the work of some other of their master's employees.[4]

Under the GERMAN law a workman's acts of devotion to his employer or to his fellow workmen in danger are deemed part of the work. And where a fireman in a gas works was suffocated while endeavoring to rescue from asphyxiation some laborers working for an independent contractor, who were excavating in the plant, the accident was held to be covered by the law.[5] Even where the object is paltry an act of devotion will be deemed part of the work if it was clearly instinctive or spontaneous. It was so decided where a boatman was drowned after jumping into a river to save a comrade's hat.[6] But accidents incurred in helping to put out fires in the neighborhood of the workplace arise from a public duty and are not connected with the work.[7] However, it was held to the contrary where the purpose was certainly to prevent the fire from reaching the employer's plant.[8 b]

The FRENCH law on this point is similar to the German. Accordingly the following accidents were held to have been caused or occasioned by the work: Where a workman was severely shocked trying to rescue a fellow workman who was caught on a "live wire,"[9] and where a workman was caught and killed in a factory fire because he had imperilled himself to reach a signal box to turn in an alarm.[10]

ACTS OF FAVOR. Under the BRITISH law the question is, was the act of favor within the sphere of the workman's employment; in other words, was it something he was required or expected to do in connection with his work.[a] Accordingly in the following cases the accidents were held to have arisen out of and in the course of the employment: Where a carter on the road, being asked for a "lift" by a fellow servant

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[1] Rees v. Thomas (1899), 1 M.-S. 9; Devine v. Caledonian R'y (1899), 36 Sc. L. R. 877; but cf. Lanarkshire Co. v. Powell (1909), 42 Sc. L. R. 231. Cf. also Menzies v. M'Quibban (1900), 37 Sc. L. R. 526, cited under "Acts of Favor," post, and Hagelman v. Poole (1908), 2 B. 48.

[2] London Co. v. Brown (1905), 42 Sc. L. R. 357.

[3] Whelan v. Moore (1909), 2 B. 114. Cf. under "The Work," supra, p. 25.

[4] Mullen v. Stewart (1908), 1 B. 204. Cf. under "Getting to and from Work," post, p. 35.

[5] Handbuch, p. 104.

[6] Id., p. 116. But this case turned particularly upon the fact that the danger of the river was a special risk connected with the work.

[7] Handbuch, p. 117.

[8] Id., p. 120.

[9] Cour d'Appel d'Aix, July 6, 1901.

[10] Cour d'Appel d'Nancy, Nov. 21, 1902.

[a] To similar effect, Dragowitsch v. Iroquois Works (Ill., 1915), 109 N. E. 999; and cf. Waters v. Taylor Co. (1916), 218 N. Y. 248 (employee of another employer).

[b] Cf. In re McPhee (Mass., 1915), 109 N. E. 633.

[a] Cf. Spooner v. Detroit (1915), 153 N. W. 657.

walking in the same direction, was thrown out and injured by the horse starting while he was arranging a seat on his cart, there being some evidence that the employer approved of the practice of giving "lifts."[1] Where two gangs of laborers working together were accustomed to exchange work, with the knowledge of their employers, and a workman in one gang was injured while doing the work of a workman in the other gang.[2] Where a laborer in a machine shop, having nothing to do with machinery, was injured while helping a machinist to replace a belt on a moving wheel.[3] Where a weigher was injured lending a hand to some fellow employes who were carrying a very heavy object to his scales to be weighed.[4] But the contrary was held where a railroad fireman, having been paid another man's wages by mistake, went to the latter's engine to give him the money and was hurt jumping off that engine while it was moving,[5] where a roadmaker, having nothing to do with the steam-roller, was injured while firing it up early one morning as a favor to the fellow servant in charge of it,[6] and where one of a number of carters, employed by the same master in making deliveries at a warehouse and whose duty it was to unload only his own cart, was injured unloading another cart, he having undertaken to unload all the carts so as to enable the other carters to carry the goods into the warehouse at the request of the consignee.[7]

Under the GERMAN law acts of favor incidental to the work are deemed part of the work if the employer's consent thereto is given or may reasonably be implied. Thus, where a master mechanic in a machine shop was hurt while mending a gun as a favor to a neighbor, it was held to be a work accident.[8] Consent is generally implied where the favor is customary or conducive to securing good will and custom for the business.[9] Accordingly where painters, paper-hangers, etc., are hurt while doing such odd jobs as moving furniture, rehanging pictures, etc., at the request of customers, presumptively they are entitled to the benefits of the law.[10] But this presumption must not be stretched too far. Consequently the following acts were held not to be in the course of the work: Where a painter working in a private house helped one of the servants to put up some heavy outside shutters.[11] Where an employee of an expressman during a pause in his job of unloading a car at a railway station, without invitation and in violation of general orders, went and helped some employees of the railroad company to unload a neighboring car.[12]

It should be noted, in this connection, that frequently what may appear at first impression to be an act of favor may not be so in reality. Thus where a truckman was injured while helping a farmer to get the latter's wagon off the road, it was found that he was really working to clear the road for his own team.[13]

Brief acts of assistance to strangers in difficulty are customary in country districts and are deemed part of the work, upon the principle of

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[1] Evans v. Holliday (1914), 7 B. 248.
[2] Henneberry v. Doyle (1912), 5 B. 580.
[3] Menzies v. M'Quibban (1900), 37 Sc. L. R. 526.
[4] Goslan v. Gillies (1907), 44 Sc. L. R. 71.
[5] Williams v. Wigan Co. (1909), 3 B. 65.
[6] M'Allan v. Perthshire Council (1906), 43 Sc. L. R. 592.
[7] Sinclair v. Carlton (1914), 7 B. 937.
[8] Handbuch, 116.
[9] Id.
[10] Id.
[11] Id.
[12] Id., p. 96.
[13] *Id., p. 77.*

reciprocity.[14] Acts of reciprocity between several gangs of laborers, working at the same place or in close proximity, are likewise deemed part of the work, the employers' consents being presumed in the absence of proof to the contrary.[15] And so also are acts of reciprocity among fellow servants, as where, for example, a butcher was injured going into a house adjoining the workshop to wake up and summon to work a fellow employee.[16]

The FRENCH law on this point is similar. But the following acts of favor were held not to constitute part of the work: Where a carter, after delivering a marble slab at a chateau, by request helped a servant to carry it inside to put it in place.[17] Where a carter, after delivering some casks at a warehouse, by request helped a porter there to lower them into the cellar.[18] Where a man in charge of the lights at a railroad station left his job and helped some carters to unload a truck for delivery to the railroad.[19]

Customary brief acts of assistance to strangers in difficulty are deemed part of the work. It was so held where a carter was hurt when jumping to the ground to help a bicyclist, whom he was passing on a country road and who was having trouble with a dog he was leading,[20] and where a truckman was hurt while using his team to help another team up a particularly steep grade, it being found that it was customary for truckmen thus to help one another out at such places.[21]

Where, with the tacit consent of their employers, two gangs of laborers are accustomed to lend each other a helping hand upon occasions, such acts of reciprocity are deemed part of the work.[22]

ACTS DONE TO SATISFY THE WORKMAN'S PERSONAL NEEDS.[1] Under the BRITISH law a workman is under the protection of the act while he is resting, taking a meal, etc., at his place of work during regular intermissions of work, and also during momentary interruptions to satisfy some physical need, provided he makes a reasonable use of such intervals.[a] Accordingly in the following cases the accidents were held to have arisen out of and in the course of the employment: Where a workman was crushed by a falling wall while eating his dinner in his employer's establishment during the noon hour.[2] Where a teamster, taking his meal in his employer's stable, was attacked and injured by the stable cat.[3] Where a girl, employed at threshing, sat over the machine during the lunch hour and, upon trying to rise, hurt herself by slipping her hand into the machinery.[4] Where a sailor engaged in washing his clothes in a dark alleyway on shipboard, fell down an open hatchway and was

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[14] Handbuch, p. 117.
[15] Id., pp. 117-118.
[16] Id., p. 98.
[17] Cass. civ., Dec. 5, 1910.
[18] Cass. civ., March 10, 1913.
[19] Cass. civ., Nov. 24, 1903.
[20] Cass. civ., Aug. 4, 1903.
[21] Cass. req., Nov. 7, 1905.
[22] Cour d'Appel de Bordeaux, March 19, 1903; Cass. req., June 11, 1907.
[1] Cf. also under "Intermissions During Work," post, p. 42.
[2] Blovelt v. Sawyer (1904), 6 M.-S. 16; Elliott v. Rex (1904), id. 27; and cf. Morris v. Lambeth Council (1905), 8 id. 1.
[3] Rowland v. Wright (1909), 1 B. 852.
[4] Cairnduff v. Gilmore (1914), 7 B. 981.

[a] Cf. Zabriskie v. Erie R. R. (1914), 86 N. J. L. 266; Milwaukee v. Industrial Commission (1915), 159 Wisc. 635; Van Ette's Case (Mass., 1916), 111 N. E. 696; De Filippis v. Falkenberg (N. Y., 1915), 170 App. Div. 153; Northwestern Co. v. Industrial Commission (1916), 160 Wisc. 633; Moore v. Lehigh R. R. (1915), 154 N. Y., Supp. 620.

killed.[5] Where a miner, who had left his post of duty to get a drink of water, on the way back was struck by a runaway hutch and killed.[6] And, where a laborer, who while riding on a wagon in the course of his work dropped his pipe in the road when in the act of lighting it, was injured getting down to pick it up, it was likewise held that the accident arose out of and in the course of the employment, on the ground that there is no distinction in principle between quitting work momentarily to pick up a dropped pipe and doing the same thing to get a drink of water.[7]

But where the workman goes to an unnecessarily dangerous or forbidden place to eat his meal or to satisfy some other personal need and is injured in consequence, the accident does not arise out of the employment.[8] And the same was held where a workman, in charge of a printing machine, injured his hand while puting a can of condensed milk, kept by him for his tea, on a ledge in the machine immediately under the running gear.[9]

Where an accident happens during meal hours or any other intermission of work away from the employer's premises or the workman's place of work, it does not arise out of the employment.[10] And where a seaman is injured while ashore to obtain provisions for himself, food not being provided on his ship, he is acting for his own purpose, and the accident does not arise out of the employment.[11] But where a brewer's drayman, employed all day in driving about the streets, one afternoon entered a public house to get a drink of beer, drank it promptly, and while returning across the road to his team was knocked down by a motor car, it was held that the accident arose out of and in the course of the employment.[12]

Where an accident results entirely from an act done to satisfy the workman's own needs and not at all from any risk connected with the employment, it does not arise out of the employment. Accordingly where a workman in a mill, wherein it was usual to work without socks, injured his finger taking off one of his socks preparatory to the day's work,[13] and where a nurse girl while minding a baby was drying her hair in front of a fire and thereby was injured by her sleeve catching fire,[14] it was held that the accidents did not arise out of the employment.

Under the GERMAN law accidents arising entirely out of acts done by a workman to satisfy his personal needs, such as eating, drinking, washing, care of the body, etc., are regarded as having no causal relation with his work; but where such a need has to be satisfied in the course of the work, the special risks to which the workman is thereby exposed are covered.[15] Accordingly where a workman during a short intermission of work, while opening a bottle of beer, was injured by the breaking of the bottle, it was held that the accident was not connected with the work, though the work was being rushed, requiring hurried refreshment, and the beer as furnished by the employer.[16] But in the following cases the accidents were held to have arisen out of risks of the work: Where a

[5] Kokolan v. S.S. "Kentra" (1912), 5 B. 658.
[6] Keenan v. Flemington Co. (1902), 40 Sc. L. R. 144.
[7] McLauchlan v. Anderson (1911), 4 B. 376.
[8] Cf. Brice v. Lloyd (1909), 2 B. 26; Thomson v. Flemington Co. (1911), 4 B. 406; Cook v. Manvers Collieries (1914), 7 B. 696; Rose v. Morrison (1911), 4 B. 277.
[9] Keen v. St. Clement's Press (1914), 7 B. 542.
[10] Cf. Gilbert v. Steam Trawler "Nazzam" (1910), 3 B. 455; McKrill v. Howard (1909), 2 B. 460; Cogdon v. Sunderland Co. (1907), 1 B. 156.
[11] Parker v. S.S. "Blackrock" (1914), 7 B. 152.
[12] Martin v. Lovibond (1914), 7 B. 243.
[13] Peel v. Lawrence (1912), 5 B. 274.
[14] Clifford v. Joy (1909), 2 B. 32.
[15] Handbuch, p. 111. Cf. also "Intermissions During Work." post, p. 42.
[16] Handbuch, p. 111. Note that beer and light wine (not spirits) are treated in all the French and German decisions as entirely proper refreshments during work.

workman going to get a drink from a faucet in a dark corner of his workplace, struck his eye against a door knob.[17] Where a workman's overalls, saturated with oil, caught fire from his striking a match to light a cigar.[18] Where a workman, going up steep stairs at the beginning of a noonday rest to get his dinner pail, slipped and fell.[19]

Where the employer furnishes a special place and means for satisfying a need of his workmen (e. g., toilet facilities, etc.), risks directly incurred by using such place and means for the purpose intended are covered.[20]

And where the need of food, drink, etc., is satisfied without suspending active work the extra risks thereby incurred are covered.[21] Accordingly where a workman, while working with his glass within reach, was injured by its breaking in his hand, the accident was held to be due to a risk connected with his work.[22]

Where a workman goes far away from the workplace to satisfy a need, or leaves it for such purpose unnecessarily or by an unnecessarily dangerous way, thereby exposing himself to risks unconnected with the work, accidents arising out of such risks are not covered.[23] But where a ferry boatman went into a house only a few steps from the landing place to change his wet clothes, and was therein injured by falling on the stairs, it was held that the accident arose from a risk connected with the work.[24] And where a gang of laborers were working for a long time at an isolated place, without provision for food, it was held that the risks of one of them on a journey to get food for the lot were covered just as would be his risks on the same journey to get coal or material for the work.[25]

Generally the risks incurred by teamsters, hackmen, cardrivers, employees on errands, etc., in going into hotels and taverns to get food, drink, etc., and more especially in loitering therein, are held to be unconnected with the work.[26] But, in an exceptional case, where a woman on a long errand, away from accustomed conveniences, suffered an accident in a house where she had gone to satisfy a pressing physical need, the accident was held to have been caused by a risk connected with the work.[27]

Under the FRENCH law, accidents suffered while satisfying a personal need at the place and during the time of work are deemed to be occasioned by the work.[28] Accordingly the following accidents were held to be covered: Where a workman, working in an exceedingly dusty and oppressive atmosphere, went to a window, to get a breath of fresh air, and fell out.[29] Where a workman, while quitting his work momentarily to get a cigarette paper from a comrade, hurt his hand in machinery.[30] Where a boathand, going to the side of the boat to relieve himself, fell into the water and was drowned.[31] Where a workman, while asleep in a foundry during the noonday rest, was injured by hot slag.[32] Where a

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[17] Handbuch, p. 114.
[18] Id.
[19] Id., p. 114.
[20] Id., p. 115.
[21] Id., p. 112.
[22] Id.
[23] Cf. id., p. 113.
[24] Id., p. 98.
[25] Id., p. 114.
[26] Id., pp. 82, 113; and cf. cases of travelers under topic, "Journeys, etc."
[27] Handbuch, pp. 113-114.
[28] Cf. "Intermissions During Work," post, p. 42.
[29] Cour d'Appel de Paris, Feb. 26, 1907.
[30] Cass. civ., Feb. 17, 1902.
[31] Cass. civ., July 26, 1905.
[32] Cass. civ., Dec. 27, 1911.

workman, on a night shift, having finished his midnight lunch in a workshed, went outside in the dark to throw the remnants into a ditch, and fell in himself.[33] Where a raiload engineer got on top of a standing coal car to eat his lunch, and was injured by jumping off when the car was moved.[34] In some of these cases it was held that the injured workman might be subject to the penalty for inexcusable fault, but that such fault did not break the causal connection.[35]

Where, however, a workman goes far away from the place of work to satisfy a need or leaves such place for such purpose unnecessarily or by an unnecessarily dangerous way, thereby exposing himself to risks not due to the work, accidents arising out of such risks are not caused or occasioned by the work.[36]

ACTS DONE FOR WORKMAN'S OWN PURPOSE. Under the BRITISH law wherever an accident is due to something done by the victim entirely for his own purpose it does not arise out of the employment.[a] It was so held in the following cases: Where an engine driver got off his engine and crossed a siding to get a book from a friend, and was injured on the way back.[1] Where a ticket collector was injured jumping on the running board of a train in motion, not to collect tickets but to speak to a friend.[2] Where a workman, going home to dinner and still within his employer's premises, was injured jumping on a railway car to get a "lift."[3] Where a mechanic injured his hand in hiding a can of condensed milk, which he kept for his tea, under the running gear of his machine.[4] [b] Where a laborer, put to work in one place, moved to another place, because he could there procure a greater product and higher pay, and in consequence was injured.[5] Where a farm hand driving to the station to get his trunk, in his employer's wagon which he had borrowed for that purpose, was thrown and injured by the horse running away.[6] But the contrary was held where an engineer, having brought his engine by special order to an unusual place, crossed some tracks to ask the manager the reason for the order, then proceeded still farther away to engage in a casual conversation with a fellow engineer, and on the way back to his engine was run down and killed.[7]

The GERMAN rule is that whatever a workman does for a purpose of his own, such purpose being entirely unconnected with the work, is at his own risk. For that reason accidents occurring under the following circumstances were held not to come under the law: Where a workman at the workplace and during the time of work, in the absence of his employer, used a forbidden machine to shape a piece of furniture for a

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[33] Cass. civ., April 28, 1902.
[34] Cour d'Appel de Rouen, Feb. 28, 1900.
[35] Cf. "Victim's Fault," post, p. 49.
[36] Cass. civ., April 3, 1913; id., Aug. 1, 1906; Cour d'Appel de Rouen, March 1, 1902.

[1] Reed v. Gt. Western R'y (1909), 2 B. 109; to same effect, Callaghan v. Maxwell (1900), 40 Sc. L. R. 313; Warren v. Hedley's Co. (1913), 6 B. 136. And see Benson v. Lancashire R'y (1904), 6 M.-S. 20; Hendry v. Caledonian R'y (1907), 44 Sc. L. R. 584; cf. also Smith v. Morrison (1911), 5 B. 161.
[2] Smith v. Lancashire R'y (1899), 1 M.-S. 1; to same effect, Revie v. Cumming, (1911), 5 B. 483.
[3] Morrison v. Clyde Trustees (1909), 2 B. 99; and cf. similar cases under "Geting to and from Work," post, p. 36.
[4] Keen v. St. Clement's Press (1914), 7 B. 542.
[5] Cf. Parker v. Hambrook (1912), 5 B. 608; Weighill v. South Hetton Co. (1911), 4 B. 141.
[6] Whitfield v. Lambert (1915), 8 B. 91.
[7] Goodlet v. Caledonian R'y (1902), 39 Sc. L. R. 759.

[a] Cf. Mann v. Glastonbury Co. (1915), 90 Conn. 116.
[b] To similar effect, Mann. v. Glastonbury Co., supra.

friend.[8] Where a day laborer without permission entered the workshop after hours to use a saw.[9] Where a carpenter, by permission, went to an upper floor of his employer's establishment to collect chips and shavings for his own use.[10] Where a workman ascended to the roof to see a fire, access to the roof being forbidden.[11] Where a builder's workman, upon the completion of a building, went to the roof to erect a pole in celebration of the event, such act by custom obligating the employer to "stand treat" to the men.[12] But where a workman secures permission to combine the serving of a purpose of his own with a service for his employer, his acts in so doing are deemed to be part of the work. Thus where a teamster was hurt while driving by permission both to do something for himself and to water his horses, the accident was covered.[13]

The FRENCH rule is, in effect, the same as the German where the workman is outside of his employer's establishment.[14] But within such establishment and during the time of work, the purpose of the workman's actions, it seems, is immaterial.[15] Accordingly where a workman in a factory and during work hours was making something for himself and was injured by the machinery, it was held that the accident was caused by the work.[16]

GETTING TO AND FROM WORK. Under the BRITISH law a workman's employment begins in ordinary course "when the time has arrived and the place has been reached at which he is employed;" and getting to and from his work is not part of the employment.[1] [a]

But where a workman going to or returning from his work suffers an accident on his employer's premises, while making a reasonable use of the facilities and rights that are given to him therein, the accident is deemed to arise in the course of the employment.[2] It was so held in the following cases: Where a collier, leaving his workplace by a recognized and customary though not the safest way, tried to pass between trucks standing on a track within his employer's premises, which trucks were suddenly put in motion and caught and crushed him.[3] Where a collier on his way to work was passing through an iron gate on his employer's premises, about 150 yards from the lamp room where he first had to go, and the gate slammed, caught and injured him.[4] Where a miner, proceeding to the entrance to a mine to begin his work, slipped and broke his leg upon some iron rails belonging to the mine and about nine feet away from the entrance.[5]

However, the last rule stated must not be taken to mean that the protection of the law extends to workmen on any part of the employer's premises. Each case must depend upon its own particular facts.[6] Gen-

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[8] Handbuch, p. 107.
[9] Id.
[10] Id., p. 106.
[11] Id., p. 107.
[12] Id.
[13] Id.
[14] Cf. "Journeys, etc.," post, p. 47.
[15] Cf. cases cited under "Arising Out of," supra, p. 19.
[16] Cour d'Appel de Nancy, March 29, 1905; and cf. under "Arising Out of," supra, p. 19.
[1] Holness v. Mackay (1899), 1 M.-S. 13; cf. also under "In the course of," supra.
[2] Gane v. Norton Colliery Co. (1909), 2 B. 42.
[3] S. c.
[4] Hoskins v. Lankaster (1910), 3 B. 476; and cf. Nicol v. Youngs Co. (1915), 8 B. 395.
[5] Mackenzie v. Cottness Co. (1903), 41 Sc. L. R. 6.
[6] Cf. Hoskins v. Lankaster (1910), 3 B. 476.

[a] Cf. Hills v. Blair (1914), 182 Mich. 20; Fumiciello's Case (1914), 218 Mass. 488; Constantin v. Public Service Commission (W. Va., 1914), 83 S. E. 88.

erally the factory gate or yard indicates the boundary, though sometimes[b] there may be a sort of excrescence.[7] Thus where a workman suffered an accident on his way to work on a footpath over property belonging to his employer but open to the public,[8] where the employer allowed his workmen to use a short cut over land belonging to him outside his works, but did not oblige them to use it, and one of them fell and was injured while using that path,[9] and where a miner was injured crossing a railway belonging to his employers and forming part of their colliery plant, but more than 300 yards away from the mine house where he was to start work,[10] it was held that the accidents did not arise out of and in the course of the employment.

Even where the accident occurs when the workman is well within the required limits, it does not arise out of the employment if due to the fact that a forbidden route has been followed or to an added risk to which the workman has unnecessarily exposed himself. Accordingly in the following cases the accidents were held not to have arisen out of the employment: Where a workman, going to work on a vessel tied up for repairs at a dock, instead of following a longer and safe way on the dock, took a direct way which was roped off and forbidden by a danger sign, and was there injured by the breaking of a rope.[11] Where a collier left his mine by neither of two customary and safe routes, but by a short cut which led over a railroad siding, crossing which he was run down.[12] Where an engineer arrived at the yard earlier than was necessary, and, instead of following the direct and safe way to his engine house, crossed some tracks to hold a private conversation with a friend, and was injured on the way from there to his engine.[13] Where a miner on his way to his workplace in the mine was killed while departing far from his proper route for some unexplained purpose.[14] Where a laborer, on the way out of his employer's premises, by a permitted route, was injured boarding a train in motion to get a "lift" up an incline on the way.[15] Where a workman engaged on a job in a church, upon arriving for work in the morning and finding the door locked, climbed a fence in order to get in by a back way and hurt his foot on some spikes in the top of the fence.[16] Where a boy in a colliery, in order to get to the place where he was about to work, in violation of rules and orders rode in an empty tub hauled on an endless chain, and while so riding met with a fatal accident.[17]

But the mere fact that in leaving or entering his employer's premises the workman uses a forbidden route, etc., does not prevent the accident from arising out of the employment, if the prohibition was a dead letter, as, for example, where the employer's officials knew that many of the

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[7] Cf. Gilmour v. Dorman (1911), 4 B. 279.
[8] Williams v. Smith (1913), 6 B. 101.
[9] Walters v. Stavely (H. L., 1911), 4 B. 303; to same effect, Gilmour v. Dorman, supra.
[10] Anderson v. Fife Co. (1910), 3 B. 539; to same effect, Graham v. Barr (1913), 6 B. 412; Caton v. Summerlee (1902), 39 Sc. L. R. 762. But cf. Nicol v. Youngs Co. (1915), 8 B. 395; Taylor v. Jones (1907), 1 B. 3
[11] Murray v. Allen (1913), 6 B. 215.
[12] Haley v. United Collieries (1907), 44 Sc. L. R. 193; to same effect, Hendry v. United Collieries (1910), 3 B. 567.
[13] Benson v. Lancashire R'y (1904), 6 M.-S. 20.
[14] Snedden v. Greenfield (1910), 3 B. 557.
[15] Pope v. Hills Co. (1910), 5 B. 175; to same effect, Morrison v. Clyde Trustees (1909), 2 B. 99; Kane v. Merry (1911), 4 B. 379.
[16] Gibson v. Wilson (1901), 38 Sc. L. R. 450.
[17] Barnes v. Nunnery Colliery Co. (H. L., 1912), 5 B. 195.

[b] Cf. Sundine's Case (1914), 218 Mass. 1 (accident on the common stairway of a loft building in which the employer's premises were situated).

workmen were in the habit of using the forbidden route and did not try to stop it.[18]

Where the employer provides the means of conveyance to and from work, pursuant to a term of the contract of employment, risks incidental to the journey generally are covered.[19] [c] It is otherwise, however, where the employer merely allows his employes to use his means of conveyance.[20] Where a laborer, whose only method of getting to and from his work was by a boat provided for him for that purpose by his employer, was drowned by falling out of the boat while proceeding to work at the usual hour, it was held that the accident arose out of and in the course of the employment.[21] But the contrary was held where a workman was injured on a journey upon a return railway ticket given him gratuitously by an employer for whom he was working by the day.[22]

But even where the employer furnishes the conveyance pursuant to the contract of employment, the real question is, when does the employment begin and end? And it begins when the work begins and ends when the work ends if the employee is under no obligation to use the provided conveyance.[23] Accordingly where the employer furnished an employee a bicycle to use during his work, and to come to and return from work if he chose, it was held that the employment ceased when the work ended, and that an accident to the employee while riding the bicycle home in the evening did not arise in the course of the employment.[24]

Where the risks of the journey are covered, the fact that an accident on the way is due to the workman's fault does not prevent it from arising out of the employment. It was so held where a workman on a train provided by his employer was injured because he got out on the running board as the train approached its destination and before it had stopped.[25] But where a workman was injured in jumping off his employer's special train, before it approached its stopping place, in order to have a shorter walk to his home, it was held that the accident did not arise out of a risk of the journey.[26]

Special Rules Relative to Seamen. Cases relating to accidents occurring to seamen while leaving or returning to their ships have been very numerous under the British law.[27] According to circumstances a trip ashore belongs in some one of three general categories. First: If a seaman goes ashore on the ship's business or to fulfil an obligation imposed upon him by his contract of service, he is in much the same position as a messenger on an errand and is protected against the same risks, subject to the some conditions.[28] Second: If he goes ashore without leave, he quits his employment for the time being and is without protec-

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[18] McKee v. Gt. Northern R'y (1908), 1 B. 165; to similar effect, Douglas v. United Mineral Co. (1900), 2 M.-S. 15; McGuire v. Gabbott (1915), 8 B. 555.

[19] Cremins v. Guest (1908), 1 B. 160; Walton v. Tredegar Co. (1913). 6 B. 592; and cf. Holmes v. Gt. Northern R'y (1900), 2 M.-S. 19.

[20] Davies v. Rhymuey Co. (1900), 2 M.-S. 22; also Whitbread v. Arnold (1908), 1 B. 317.

[21] Mole v. Wadworth (1913), 6 B. 129; and cf. Richardson v. Morrow (1914), 7 B. 130; but cf. Holmes v. Gt. Northern R'y (1900), 2 M.-S. 19.

[22] Nolan v. Porter (1909), 2 B. 106.

[23] Cf. Davies v. Rhymney Co., supra; also Whitbread v. Arnold (1908), 1 B. 317.

[24] Edwards v. Wingham Co. (1913), 6 B. 511.

[25] Watkins v. Guest (1912), 5 B. 307; to same effect, Walton v. Tredegar Co. (1913), 6 B. 592.

[26] Price v. Tredegar Co. (1914), 7 B. 387.

[27] As to unexplained drowning of seamen, see "Proof," post, p. 65.

[28] McDonald v. S.S. "Banana" (1908), 1 B. 185; and cf. Lee v. S.S. "St. George" (1914), 7 B. 85; Parker v. S.S. "Blackrock" (H. L., 1915), 8 B. 327; and also cf. "Journeys, etc.," post, pp. 44-45.

[c] Donovan's Case (1914), 217 Mass. 76.

tion until he gets back to the ship; and even accidents suffered in the very act of quitting the ship or of regaining it do not arise out of the employment.[29] Third: If he goes ashore with leave for purposes of his own he does not interrupt his employment; but accidents occurring during the period ashore generally arise from risks common to the public and not out of the employment. Consequently, when in due course he returns to his ship, accidents on the way are in the course of the employment, but the risks incurred do not become risks arising out of the employment until he has to do something specifically connected with his ship. Possibly those risks may be encountered before he actually touches the ship or the special means of access to it; but the risks of falling from a dock before he has taken any specific steps to get aboard his vessel are risks common to everyone and not incidental to his emplyoment.[30]

Accordingly it was held in the following cases that the accidents arose out of the employment: Where a seaman went ashore to get necessaries and in returning fell into the water from a loosely hanging ladder, which was the only means of access to the ship, and was drowned.[31] Where a sailor, who had been on shore with leave and upon returning found another ship moored between his ship and the dock, fell off a gangway between the first ship and the dock, and was drowned.[32] Where a sailor, on returning from shore leave, fell off the gangway from the dock to his ship.[33] Where a sailor, going home for the night, fell off a ladder fastened to and forming part of the dock but for the time being appropriated to the use of his ship.[34]

But the contrary was held in the following cases: Where a seaman, returning to his ship from shore leave and when proceeding along a quay, about twelve feet from the gangway to the ship, stumbled and fell into the water.[35] Where a ship's fireman went home over Sunday, and on the way back the next morning reached a public quay, hailed a waterman, and, on descending the steps of the quay, slipped, fell, and was injured.[36] Where a captain returning to his ship, it not being proved that he was ashore on the ship's business, reached a public quay, hailed a boat, and while waiting for it fell into the water and was drowned.[37] Where a seaman, ashore on leave, upon returning to his ship, found that it had been moved, and in making his way along the docks to the new mooring, was injured by a train.[38]

Where a seaman returning to duty from shore leave and finding no gangway or other proper means of access to his ship, jumps for it and is injured, the accident may arise out of the employment.[39] But not where there was a proper gangway.[40] And where a ship's engineer, returning

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[29] McDonald v. S.S. "Banana," supra; Martin v. Fullerton (1908), 1 B. 168; and cf. Frith v. S.S. "Louisianian" (1912), 5 B. 410; O'Brien v. Star Line (1908), 1 B. 177.

[30] Kitchenham v. S.S. 'Johannesburg" (H. L., 1911), 4 B. 311; Webber v. Wansbrough Co. (H. L., 1914), 7 B. 795.

[31] Moore v. Manchester Liners (H. L., 1910), 3 B. 527; in effect overruling Hyndman v. Craig (1910), 4 B. 438.

[32] Leach v. Oakley Street & Co. (1911), 4 B. 91.

[33] Peters v. S.S. "Argol" (1912), 5 B. 414; to same effect, Canavan v. S.S. "Universal" (1910), 3 B. 355.

[34] Webber v. Wansbrough Co. (H. L., 1914), 7 B. 795.

[35] Craig v. S.S. "Calabria" (1914), 7 B. 932; to similar effect, Kitchenham v. S.S. "Johannesburg," supra; Gilbert v .Trawler "Nazam" (1910), 3 B. 455; and cf. Cook v. S.S. "Montreal" (1913), 6 B. 220: Mitchell v. S.S. "Saxon" (1912), 5 B. 623.

[36] Kelly v. Ship "Sea Foam" (1910), 3 B. 113; to similar effect, Dixon v. S.S. "Ambient" (1912), 5 B. 428.

[37] Hewitt v. S.S. "Duchess" (H. L., 1911), 4 B. 317.

[38] Biggart v. S.S. "Minnesota" (1911), 5 B. 68.

[39] Kearon v. Kearon (1911), 4 B. 435.

[40] *Martin v. Fullerton* (1908), 1 B. 168.

from shore leave, tried to reach his ship, some 100 yards out in the harbor, in a large boat, without oars, by paddling with the rudder, and was carried out to sea and drowned, it was held that the accident did not arise out of and in the course of the employment.[41] However, the contrary was held where a returning seaman tried, against orders, to get aboard his ship by a skid used for discharging cargo, instead of the gangway, and was injured in consequence.[42]

To be distinguished from the foregoing are those cases where the sphere of the servant's duties covers both a ship and a wharf or quay. In such cases accidents on the quay normally arise out of the employment.[43] On the other hand, where a seaman's duties require him to stay ashore, an accident resulting from an attempt to board his ship does not arise out of the employment.[44]

Where a seaman is dismissed and his employment terminated, his master must afford him reasonable facilities to reach the public shore; and if he is injured whilst availing himself of those facilities the master may be liable.[45]

Where a laborer is employed on a lonely island he is in much the same position as a sailor, and the risks of transportation to and from the mainland on occasional "shore leaves" are similarly covered.[46]

Under the GERMAN law, merely going to and from work, either at the beginning or end of the day or during intermissions, is no part of the work.[47] Consequently the risks of the journey are not covered until the boundary of the "workplace" or "work-district" is reached nor after it is left, unless the particular journey has some special and more direct connection with the work.[48] But where access to the workplace is dangerous the special risks of entrance and exit are covered within the surrounding danger zone.[49]

Once the boundary of the "workplace" is reached it makes no difference that the workman incurs extra risks by varying from the usual or prescribed route or manner of getting to the exact locality where he has to work. Therefore where a workman, on his way to work, was injured while taking a dangerous short cut inside the workplace, and where a workman hurt himself climbing over a gate to get into the workplace, the accidents were held to be covered.[50]

The fact that the route between the workman's home and the workplace lies through a lonely district or a dark neighborhood makes no difference.[51] Nor does the fact that he carries tools for his work, unless one of the tools itself causes the accident or aggravates the injury.[52] Nor does the fact that he stops on his way to leave a message for his employer,[53] nor that, having finished an errand for his employer, he has to follow an unusual route home.[54]

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[41] Halvorsen v. Salvesen (1912), 5 B. 519.
[42] Robertson v. Allan (1908), 1 B. 172. Cf. also cases cited under "Victim's Fault," post, p. 48.
[43] Cf. Low v. General Fishing Co. (H. L., 1909), 2 B. 56; Richardson v. S.S. "Avonmouth" (1911), 5 B. 34.
[44] Griggs v. S.S. "Gamecock" (1913), 6 B. 14.
[45] Cook v. S. S. "Montreal," (1912), 6 B. 220; explained, Webber v. Wansbrough Co., supra.
[46] Richardson v. Morrow (1914), 7 B. 130; and cf. Mole v. Wadsworth (1913), 6 B. 129.
[47] Handbuch, p. 89.
[48] Id. For definition of "workplace" and "work district," see supra, p. 22.
[49] Id.
[50] Id., pp. 89, 91.
[51] Id., p. 110.
[52] Id.
[53] Id.
[54] Id.

But where the journey between the workman's home and the workplace or *vice versa* has some direct connection with the work, the risks of the journey are covered. It was so held where the journey was for the special purpose of carrying home material to work on.[55]

The risks of assault by strikers, discharged employees, etc., within the danger zone outside the entrance or entrances to the workplace are covered; but how far such danger zone may extend has never been defined.[56] So also are the risks of trips from ships in harbor to the shore.[57] But where a ship is tied up at a dock, generally only the gangway and the dock used by the ship are considered to be within the danger zone, although, under some circumstances, a way along the water to the ship or dock may be included.[58]

The fact that the employer furnishes transportation to and from work is not sufficient to connect the journey with the work. Accordingly in the following cases the accidents were held not to be covered:[59] Where an employee of a street car company was injured while riding home free on one of its cars. Where a brickmaker was hurt while riding to the railroad station in a bus furnished by his employer. Where a workman was drowned while using his employer's skiff to cross a river, in order to avoid a round-about journey home by land. But it was held to the contrary where a brewer's clerk was injured while riding home on his employer's delivery wagon, partly for the purpose of guarding the team while the driver made deliveries.[60]

Under the FRENCH law a workman going to or from work is not under the full protection of the law, even within his employer's establishment, unless therein he uses a proper route or method of reaching or departing from his post of duty. Accordingly in the following cases the accidents were not covered: Where an employee at a railroad station, leaving his work, was injured while cutting across the tracks against orders.[61] Where such an employee coming to work was injured while cutting across the tracks instead of using an underground tunnel.[62] Where a brickmaker was injured while entering the yard through a tunnel meant for drying bricks and not for a passageway.[63] Where at the end of a day's work a workman, instead of leaving properly, for amusement tried to jump over an opening in the floor near the factory exit, fell in and was injured.[64] Where one of a gang of tracklayers was injured on the railway 300 meters away from the locality where the gang was to work.[65] But where a railroad tracklayer necessarily had to follow the railroad tracks to reach his place of work, an accident on the way, though far from the point where he was to work, was held to be covered.[66]

Special circumstances may make the journeys from the workman's home to his workplace and *vice versa* a part of his work. In a border line case, where an employee, who had charge of opening and closing his employer's shop, was hurt on the street on the direct way

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[55] Handbuch, pp. 110-111.
[56] Cf. cases cited under "Assaults," post, p. 54.
[57] Handbuch, p. 111.
[58] Id. Where, however, a sailor is sent ashore on the ship's business, the risks covered extend further; see "Journeys, etc.," post, p. 45.
[59] Handbuch, pp. 109-110.
[60] Id., p. 107.
[61] Cass. req., Feb. 25, 1902.
[62] Cass. civ., March 3, 1903.
[63] Cass. civ., March 2, 1903.
[64] Cass. req., Oct. 21, 1908; to same effect, id., March 28, 1905.
[65] Cass. req., July 6, 1910.
[66] Cour d'Appel d'Amiens, Nov. 15, 1905.

from his home to the shop, while he was going with the keys to open the shop at the proper time in the morning, it was held that the accident occurred during the time and at the place of work.[67]

The rule is different where the employer provides the transportation to and from work. If he provides such transportation he must provide safe transportation. Accordingly in the following cases the accidents were held to be covered: Where an employee of a street car company was injured while riding home on one of the company's cars, its employees having permission to ride free thereon to and from work.[68] Where a workman was injured while traveling home on a railway with tickets furnished by his employer.[69] But the contrary is the rule where an employee uses a vehicle of his employer's without permission or against orders, as, for example, where a railroad employee was injured getting on a particular train which he was forbidden to use.[70]

GETTING WAGES, ETC. Under the BRITISH law attendance at the proper time and place to obtain wages is part of the workman's contract. Accordingly where a temporary worker, discharged on Wednesday, was injured in his employer's establishment, where he had properly returned on the next Friday to get his wages, it was held that the accident arose in the course of the employment.[1] And the same was held where a laborer on public roads had to go to a distance in the course of his day's work to collect his pay, and suffered an accident on the journey.[2] But the contrary was held where a miner, being dissatisfied with the wages paid him and told to come back the next day to see the manager about it, did so return, not intending to resume work unless satisfied, obtained no satisfaction, and suffered an accident while leaving the colliery premises.[3]

Time spent in collecting tools after discharge may also be included in the time of employment.[4]

Under the GERMAN law, attendance in the employer's establishment to obtain payment of wages generally is regarded as incidental to the work.[5] Accordingly where a railroad trainman was killed while crossing the tracks at a station to collect his pay, the accident was held to be covered.[6] And it has been held, where a teamster, who was supplied with firewood as part of his remuneration, was injured while driving a load of such wood to his home, that the accident occurred in the course of his work and was connected with it.[7] But attendance at a bankruptcy court to secure wages due from the bankrupt or at a post-office to collect compensation for an injury is no part of the work.[8] And journeys to and from collecting pay are subject to the sams rules as journeys to and from actual work.[9]

Time spent at the workplace to get a certificate of character after discharge is also part of the time of work.[10]

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[67] Cass. civ., June 15, 1911. And cf. Cass. civ., June 24, 1905.
[68] Cass. req., June 7, 1910.
[69] Cour d'Appel de Lyon, July 11, 1911.
[70] Cass. req., Feb. 25, 1902.
[1] Riley v. Holland (1911), 4 B. 155; to same effect, Lowry v. Sheffield Co. (1907), 1 B. 1.
[2] Nelson v. Belfast Corporation (1908), 1 B. 158.
[3] Phillips v. Williams (1911), 4 B. 143.
[4] Molloy v. South Wales Co. (1911), 4 B. 155.
[5] Handbuch, p. 108; and cf. p. 94.
[6] Id., p. 108.
[7] Id.
[8] Id., p. 109.
[9] Id., pp. 108-109.
[10] Id., p. 95.

The FRENCH law is similar. Where a discharged workman suffered an accident while waiting in his employer's establishment to receive his wages, it was held that the accident occurred during the time and at the place of work.[11]

REPAIRING TOOLS. Under the GERMAN law, where a workman has to furnish his own tools, an accident due to his repairing them at home or elsewhere away from the workplace has no connection with the work.[1 a] And the same is true as to the repair of any protective device he must wear.[2] Accidents to workmen while repairing or sharpening their own tools, etc., at the workplace, are covered, if the work is done upon machines provided by the employer for that purpose; but otherwise not.[3] Repairing the employer's tools is part of the work.[4]

Under the FRENCH law, where an employee was injured cleaning a bicycle, such bicycle having been furnished him by his employer for use in his work, it was held that the accident was occasioned by the work.[5]

INTERMISSIONS DURING WORK.[1] Under the BRITISH law the workman remains protected during intervals of leisure occurring in the course of his work, provided he makes reasonable use of such intervals.[2 b] This is true though he is paid by the hour and the regular intermissions are not included in the time paid for.[3] And it is true, not only as to regular intermissions, but also as to temporary suspensions of work to satisfy the workman's personal needs.[4] But the noonday lunch hour is not part of the time of employment of a law clerk.[5]

Under the GERMAN law, where a workman remains in the workplace during rest periods, etc., with his employer's consent, the latter owes him some measure of protection, but the workman, on his side, must not deliberately expose himself to unnecessary risks.[6]

Under the FRENCH law intermissions of work during which the workman remains in his employer's establishment with the latter's consent, express or implied, are included in the time of work; and the employer then continues to owe the workman the fullest duty of protection, and all risks are covered, just as if at work,[7] unless, possibly, the workman capriciously or for a purpose of his own exposes himself to risks unconnected with the work and is thereby injured.[8] But where a workman enters or remains in his employer's establishment during an intermission of work, against orders, the risks thereby incurred are not covered.[9]

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[11] Cass. civ., Nov. 15, 1911.
[1] Handbuch, pp. 107-108.
[2] Id.
[3] Id., p. 108.
[4] Id.
[5] Cass. req., May 11, 1904.
[1] Many cases relevant to this topic will be found cited under "Acts Done to Satisfy the Workman's Personal Needs," supra, p. 31.
[2] Bryce v. Lloyd (1909), 2 B. 26.
[3] Blovelt v. Sawyer (1904), 6 M.-S. 16.
[4] Keenan v. Flemington Co. (1902), 40 Sc. L. R. 144; and cf. under "Acts Done to Satisfy the Workman's Personal Needs," supra, p. 31.
[5] McKrill v. Howard (1909), 2 B. 460.
[6] Handbuch, pp. 93, 94, 96.
[7] Cass. civ., July 8, 1903; id., Dec. 27, 1911; and cf. id., Nov. 10, 1903.
[8] Cf. Sachet, §§ 346, 348.
[9] Cour d'Appel d'Agen, July 30, 1902; and cf. under two following titles.

[a] This rule in effect followed, De Voe v. N. Y. State Railways (1916) 218 N. Y., 318 (taking watch to be regulated); but, *contra,* Kingsley v. Donovan (N. Y., 1915), 169. App. Div. 328 (repairing own bicycle).

[b] Cf. Northwestern Co. v. Industrial Commission (1915), 160 Wisc. 633 (porter engaged at loading, resting between loads). And see citations under "Acts Done to Satisfy the Workman's Personal Needs," supra.

REST IN EMPLOYERS' LODGINGS AND STRANGE PLACES. Under the BRITISH law the test is whether or not the accident occurred in the course of the employment. The employment of domestic servants and seamen is continuous; and, accordingly, where a domestic servant was injured by falling plaster in her bedroom in her employer's house, while she was getting up in the morning,[1] and where an engineer on a ship was asphyxiated in his cabin during the night,[2] it was held that the accidents arose in the course of the employment.

Under the GERMAN law the test is whether the workman was spending his time where the accident occurred entirely in the interest of his employment. Accordingly where a workman was injured while asleep at night in a shed in the workplace, wherein he was permitted to sleep but had no duty to perform, and where a workman was injured in the night while going from the company's barracks to the toilets, it was held that the accidents did not occur in the course of the work.[3] But where a grain thresher fell out of a hayloft where he had been directed to spend the night so as to be ready for work nearby very early the next morning, and where a roadmaker fell on the stairs of a strange house where he was spending the night under his employer's orders, for a similar reason, it was held that the accidents occurred in the course of the work and had a causal relation with it.[4]

Though workmen sent to work at a distance from their employers' establishments incidentally incur risks of stay at strange places, yet, generally, accidents happening while they are satisfying their personal needs of rest, refreshment and recreation at such places are held not to occur in the course of the work.[5] It was so held where a traveling workman fell while going down stairs in his hotel in the evening to get a candle,[6] where a traveling workman went out onto a balcony of his hotel and fell to the street,[7] and where a traveling workman, having missed his train, went into a nearby tavern to pass away the time till the next train, slipped on the ice in the courtyard and fell.[8]

Under the FRENCH law the test seems to be whether the workman was "on duty" or was the master of his own time. Accordingly where an employee was asphyxiated at night in a bedroom provided for him by his employer in or adjacent to the workplace but where he was under no obligation to be at the time, it was held that the accident did not occur during the time of work.[9] But the contrary was held where a boatman fell off a river boat during the night, while it was tied up at dock and out of operation, the boatman being employed continuously and provided with sleeping accommodations aboard.[10]

Where a commercial traveler, stopping at a hotel in a strange city, got up in the night to satisfy a personal need, slipped and fell on the floor of his bedroom,[11] and where a commercial traveler suffered a fall through the slipping of a table upon which he was writing his mail in a café,[12] it was

[1] Aldridge v. Merry (1913), 6 B. 450; to same effect (suffocation by fire in bedroom), Chitty v. Nelson (1908), 2 B. 496.
[2] Edmunds v. S.S. "Peterston" (1911), 5 B. 157.
[3] Handbuch, p. 115.
[4] Id.
[5] Id., p. 102.
[6] Id.
[7] Id.
[8] Id.
[9] Cass. req., Feb. 3, 1912.
[10] Cass. civ., Nov. 10, 1903. Cf. unexplained drowning of seamen, under "Proof," post.
[11] Tribunal de Lyon, July 3, 1908.
[12] Justice de Paix de Paris, April 2, 1909.

held that the accidents did not occur during the time of work. But the contrary was held where a commercial traveler having spent the evening, perhaps convivially, with a prospective customer, upon return to his hotel, tripped in the entrance, and fell.[13]

JOURNEYS, ERRANDS, ETC.[1] Under the BRITISH law the same principles, so far as appropriate, are applicable to accidents happening to workmen employed outside the employer's premises as are applicable to accidents happening to workmen employed within such premises.

Where an employee's business is to travel, as is the case with commercial travelers, carters, etc., all the time properly occupied in travel is covered.[2]

Where a workman living near and usually employed at King's Cross railway terminal in London, was assigned temporarily to work at a station some distance down the line and transported there and back daily free of charge on his employer's cars, it was held that such daily journeys were in the course of the employment.[3]

Where canvassers, collectors, etc., have to enter strange houses, they are in the course of the employment in so doing, and risks thereby incurred arise out of their employment.[4] And where canvassers, collectors, etc., with their employers' knowledge, use bicycles in their work, the special risks thereby incurred arise out of the employment.[5] But it is otherwise where the use of the bicycle was unknown to the employer.[6] [a] And there must be some special risks incurred and the accident must arise out of such risks. Consequently, where a herd boy started to ride his bicycle from one of his employer's farms to another and was thrown by his own dog getting in the way, it was held that the accident arose in the course of but not out of the employment.[7]

Where an employee is sent on an errand he is protected only while he keeps within the sphere of his employment and during a reasonable time. Accordingly in the following cases the accidents were held not to have arisen out of and in the course of the employment: Where a messenger was sent to a branch post-office to get a money order, and failing to get it there proceeded toward the general post-office and on the way slipped on a banana peel and fell;[8] where a workman sent on an errand of about a mile loitered for two hours, and suffered an accident on the way back.[9] Where a carter, whose duty it was to stay by his cart, left it backed up against a railway embankment, and was killed while walking down the tracks to speak to a foreman,[10] and where a carter, sent with a horse and cart to deliver a load of sand, instead of returning to his employer's yard by the nearest and usual way, went back by another and little longer route,

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[13] Cass. civ., April 20, 1912.

[1] Cf. also under "Street Accidents," post.

[2] Dickinson v. Barmack (1908), 124 Law Times, 403; but cf. M'Crae v. Renfrew (1914), 7 B. 898.

[3] Holmes v. Gt. Northern R'y (1900), 2 M.-S. 19.

[4] Refuge Assurance Co. v. Millar (1912), 5 B. 522.

[5] Pierce v. Provident Co. (1911), 4 B. 242; M'Neice v. Singer Co. (1911), 4 B. 351; and cf. under "Street Accidents," post, p. 55.

[6] Butt v. Provident Co. (1913), 6 B. 18.

[7] Greene v. Shaw (1911), 5 B. 573.

[8] Smith v. Morrison (1911), 5 B. 41.

[9] Bates v. Davies (1909), 2 B. 459.

[10] Morris v. Rowbotham (1915), 8 B. 157.

[a] Cf. Reimers v. Proctor Co. (1914), 85 N. J. L. 541 (using automobile for deliveries, [illegible]nt orders).

stopped at a tavern to take a drink, and upon resuming his journey was thrown and killed by his horse running away.[11]

Where an accident suffered by an employee while on a journey or errand is due to an added risk to which he has needlessly exposed himself it does not arise out of the employment. Therefore it was held in the following cases that the accidents did not arise out of the employment: Where a commercial traveler went to another town on business one morning, but instead of transacting his business went on a spree, and, returning to the railroad station in the evening on his way home, in an intoxicated condition, was there injured.[12] Where a clerk carrying a message was injured boarding a car, moving at five miles an hour, without invitation and against posted warnings.[13] Where a boy delivering fish to the kitchen on an upper floor of an infirmary was injured while taking himself up in an elevator, against which he had been cautioned, instead of using the stairway.[14] Where a messenger boy, employed by a railway, attempted to cross the main line tracks, in violation of rules, and was run over.[15] Where a canal overseer, returning to his office from a business visit to a railway station, instead of going by road, took a short cut along the railway, and was knocked down by a train.[16] Where a builder's workman, alighting from a train in a town in which he was to supervise work, instead of crossing the tracks by a bridge, attempted to cross the rails, and was run down and killed by an express.[17] Where a laborer had to go back and forth between his employer's two farms on opposite sides of a river, which it was customary to cross by boat, one day, in the absence of the boat and against his employer's warnings, tried to cross by swimming, and was drowned.[18] Where a farm laborer, walking from one of his employer's farms to another, in the course of his work, suffered an accident trying to jump on one of his employer's wagons, going in the same direction, to get a "lift."[19]

The GERMAN industrial accident insurance law applies only to work in "industries," which work is generally carried on within well defined establishments, called "workplaces" or "work-districts." Consequently the rules developed by the tribunals contemplate generally work carried on within such workplaces. Where workmen, in the course of their work, go or are sent outside of such workplaces, there are some modifications in the principles applicable, but the distinctions are not clearly defined. In a general way, it seems, the German law relative to accidents occurring under the latter circumstances approaches more nearly to the British law in applying something like the rule of "sphere of employment."

Where a workman is sent outside of the workplace under his master's orders, or goes outside for a purpose of his work with the latter's consent, express or implied, he is in the course of his work.[20] Such is the case where carters, drivers, etc., are regularly employed outside,[21] where work-

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[11] Everitt v. Eastaff (1913), 6 B. 184.
[12] M'Crae v. Renfrew (1914), 7 B. 898.
[13] Wemyss Co. v. Symon (1912), 6 B. 298; and cf. Jibb v. Chadwick Co. (1915), 8 B. 152.
[14] McDaid v. Steel (1911), 4 B. 412.
[15] McGrath v. London & N. W. R'y (1913), 6 B. 251.
[16] McLaren v. Caledonian R'y (1911), 5 B. 492.
[17] Pritchard v. Torkington (1914), 7 B. 719; but cf. Sanderson v. Wright (1914), 7 B. 141.
[18] Guilfoyle v. Fennessey (1913), 6 B. 453.
[19] Parker v. Pout (1911), 5 B. 45.
[20] Cf. Handbuch, p. 97. As to entering taverns, etc., for needed food, drink, etc., see under "Acts Done to Satisfy Workman's Personal Needs," supra, p. 33.
[21] Id., p. 101.

men are detailed to temporary outside jobs,[22] where workmen have to go back and forth between two or more workplaces,[23] where erectors, assemblers, etc., have to travel to a distance to install material, etc.,[24] where a factory storekeeper goes out with the police to hunt for stolen goods,[25] where a mine manager goes to another establishment to observe an experiment with explosives,[26] and where workmen have to go outside to reach toilets or places to change wet clothing, etc.[27] But where a factory hand was detailed temporarily to an outside job and paid for the time occupied daily in going back and forth between it and his home on the cars, it was held that such journeys were not in the course of the work.[28]

Where a workman is sent outside the workplace on an errand a reasonable time for performance is covered; and the mere fact that he interrupts his journey by entering a saloon to get a drink does not prevent the remainder of the trip from being in the course of his work, unless the stay in the saloon is prolonged, and it does not prevent the risks incurred on the remainder of the trip from being connected with his work, unless they are appreciably increased by his actions in the saloon.[29]

But the causal connection with the work is broken, and the risks incurred are not covered, if the route or the method or manner of locomotion on the journey is not reasonable or customary or is contrary to orders, or if the workman otherwise unreasonably and deliberately exposes himself to dangers not incidental to his duty. Thus accidents happening under the following circumstances were held to have no relation with the work: Where a foreman, returning from some outside work, rode on a hand-car, which he knew to be improper.[30] Where a workman on a journey jumped off a trolley car going at full speed.[31] Where an erector, coming back to the factory from an outside job, unnecessarily attempted to cut across railroad tracks.[32] Where on a train, a traveling workman, needing to vomit, got out on the running board for that purpose instead of going to the toilet.[33] Where a workman on an errand was accidentally shot while loitering a long time chatting in front of a shed.[34]

However, acts of only slight imprudence on the journey do not break the causal connection with the work. It has been so held where a workman jumped off a trolley car while it was moving slowly,[35] where a workman on a journey was injured because he went out on the platform of an unusually crowded and ill ventilated train to get a breath of fresh air,[36] and where a farm hand riding to market on a wagon was injured because, in order to warm up, he got out of the wagon to walk, and taking a short cut across a curve in the road, fell into a ditch.[37]

Under ordinary circumstances a workman having to go some little distance in the course of his work may accept a "lift" in any reasonable kind of a vehicle, especially if ordered to make haste.[38] A workman

[22] Handbuch, p. 99.
[23] Id., p. 98.
[24] Id., p. 97.
[25] Id.
[26] Id., p. 104.
[27] Id., p. 98.
[28] Id., p. 99.
[29] Id., p. 103.
[30] Id., p. 99.
[31] Id., p. 102.
[32] Id., p. 101.
[33] Id., p. 102.
[34] Id. p. 102.
[35] Id., p. 102.
[36] Id., p. 101.
[37] Id.
[38] Id., p. 100.

carrying a pressing message may ride in a coal car on a spur railroad.[39] An engineer going a short distance into the country may use a sleigh.[40] Ordinarily a bicycle is a reasonable means of conveyance for appropriate distances.[41] But where a bicycle is used, it must be used in a reasonable manner, the risks of racing on the road not being covered.[42]

Accidents to carters and others whose work entails almost perpetual journeys are governed by the same principles. Where a drunken teamster surrendered the charge of his team to another employee, and was injured while following on foot, it was held that the accident did not occur in the course of the work.[43] But the contrary was held where a driver was hurt on the road while walking home after his team had run away and left him.[44]

Under the FRENCH law there is a great difference between the employer's responsibility to workmen in his establishment and his responsibility to those sent outside. Within the establishment during certain times a workman is at his place of work wherever he may go and for whatever purpose.[45] But where the workman is employed or sent outside his employer's establishment the rule as to him is more strict. Though he is at his "place of work" wherever he may go under his employer's orders and for the needs of the latter's business,[46] he must keep close to his prescribed duties and follow proper routes. Where a teamster, hauling wood, left his team in the road and went into the woods to make suggestions to a woodchopper as to the latter's work, and there suffered an accident,[47] and where a carter went out of his proper route to get some tobacco and was injured while standing by his team chatting in front of the tobacconist's,[48] it was held that the accidents had not occurred at the place of work.

And the workman must also do his work within proper time. Where a wagon driver at 4 P. M. received some six packages to deliver at no great distance, was next seen, by the police, driving around at 1 A. M. and at 2 A. M. was found lying dead on the road, it was held that the accident could not have happened during the time of work.[49]

In early cases by lower courts it has been held that, where a workman, sent on an errand, accidentally shot himself with a gun which he was carrying for his own amusement,[50] and where a workman sent on an errand was injured using a borrowed motorcycle, without his employer's knowledge, the accidents were not caused or occasioned by the work, but by added risks unconnected with the work.[51] Whether these decisions are overruled by the later decisions of the *Cour de Cassation,* to the effect that every accident occurring during the time and at the place of work, unless due to the action of forces of nature, is occasioned by the work,[52] *quaere.*

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[39] Handbuch, p. 100.
[40] Id.
[41] Id.
[42] Id.
[43] Id., p. 101.
[44] Id.
[45] Cf. "In the Course of," supra, p. 22.
[46] Cass. civ., Aug. 6, 1907.
[47] Cass. civ., March 11, 1913.
[48] Cass. req., April 27, 1903.
[49] Cass. req., July 4, 1905.
[50] Tribunal de la Reole, March 21. 1900.
[51] Tribunal de la Seine, May 28, 1902.
[52] Cf. cases cited under "Arising Out of," supra, p. 19.

THE VICTIM'S FAULT.[1] Under the BRITISH law, where an accident is due to the fault, recklessness or misconduct of the injured workman, it may nevertheless arise out of the employment[a] if the workman was acting within the sphere of his employment.[2] But not where the accident is due entirely to the misconduct alone.[3] The rule is the same where the victim's fault consists of a violation of orders or rules, unless the rule or order violated effectually defines and limits the sphere of employment[4] and unless the accident actually arises out of an illicit and unauthorized act outside of such sphere.[5]

Accordingly in the following cases of recklessness or misconduct the accidents were held to have arisen out of the employment: Where a seaman working on a gangway, when it had to be lowered, instead of properly walking off, caught hold of the stem of a nearby vessel to swing himself back to his ship, slipped and fell into the water.[6] Where a window cleaner slipped and fell while moving from one window to another by an exterior ledge, instead of going around inside the building, as he might have done.[7] Where a riveter on board a ship, going ashore for a meal and finding no gangway, tried to descend to the dock by a rope, slipped and fell.[8] Where a woman, employed to clean standing machinery, finding a guard removed, proceeded to clean the uncovered and dangerous parts, and was injured by the starting of the machinery.[9] Where a workman put himself in a position of great and obvious danger by choosing a wrong way to get to the top of a tank, and was killed by a revolving shaft.[10] Where a sailor, returning to his ship in a condition of semi-intoxication, lost his balance and fell while mounting a dangerous gangway between the dock and the ship.[11] Where an intoxicated engineer, driving a traction engine, fell off the footplate and was fatally injured.[12] But where a sailor, returning from shore leave, regained his ship, on his hands and knees, in a state of beastly intoxication, and, in endeavoring to rise, staggered backwards, fell overboard and was drowned, it was held that the accident arose entirely out of his misconduct and not out of his employment.[13]

Where the fault or misconduct consists of a violation of rules or orders the general test is whether the sphere of employment has been departed from. The cases on that question are cited under the title, "The Work."[14] In a case not determinable by that test, where a ship's engineer was allowed to rig up a stove to heat his cabin but was forbidden to use

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[1] Cf. also under "Getting to and from Work," supra, p. 35, and under "Journeys, etc.," supra, p. 45.

[2] Cf. "Sphere of Employment," supra, p. 24. The statute, however, provides that if the misconduct was serious and wilful, and the injury is not serious and permanent, there shall be no compensation; Act of 1906, Sec. 1 (2) (c). The law on this point is not covered in this work.

[3] Firth v. S.S. "Louisianian" (1912), 5 B. 410.

[4] Whitehead v. Reader (1901), 3 M.-S. 40; and cf. Greer v. Lindsay Thompson (1912), 5 B. 586.

[5] Smith v. Fife Co. (1914), 7 B. 253.

[6] Gallant v. S.S. "Gabir" (1913), 6 B. 9.

[7] Bullworthy v. Glanfield (1914), 7 B. 191.

[8] Kayser v. Burdick Co. (1910), 4 B. 87.

[9] Greer v. Lindsay Thompson (1912), 5 B. 586

[10] Durham v. Brown (1898), 38 Sc. L. R. 190; and cf. Pepper v. Sayer (1914), 7 B. 616.

[11] Nash v. S.S. "Rangatira" (1914), 7 B. 590.

[12] Frazer v. Riddell (1913), 7 B. 841; followed in Williams v. Landudno Co. (1915), 8 B. 143.

[13] Frith v. S.S. "Louisianian" (1912), 5 B. 410.

[14] Supra, p. 23.

[a] Cf. Clem v. Chalmers Co. (1914), 178 Mich. 340 (recklessness); Edwards Co. v. Industrial Commission (1913), 154 Wisc. 105 (intoxication); Taylor v. Seabroke (1915), 87 N. J. L. 407 (intoxication); Kiernan v. Friestedt Co. (N. Y., 1916), 171 App. Div. 539 (intoxication); and cf. also, wilful negligence, West Jersey Trust Co. v. Philadelphia & R. R. R. (N. J., 1915), 95 753.

it in the night, and nevertheless did so use it and was asphyxiated, it was held that the accident arose out of the employment.[15]

Under the GERMAN law, where the injured workman's fault is a contributory cause of an accident, it does not break the causal relation between the accident and the work, if the act constituting such fault was done for a purpose of the work.[16] But where the act, either in nature, or intent, has nothing to do with the work, a resulting accident does not arise out of the work, even though trade instruments, etc., may have contributed to it.[17] Disobedience of orders, even if those orders which limit service, merely constitutes fault, and does not break the causal connection with the work.[18] But where the act to which the accident was due was against orders or instructions, the burden is upon the claimant to prove that it was for a purpose of his work.[19] In the following cases the accidents were held to have arisen out of the work: Where a carter should have walked beside his load, but instead got on top and fell off; where a telegraph lineman, having to ride on a railroad, should have entered the train while it was standing still, but instead jumped on it in motion; where a railroad yardman should have withdrawn from danger to rest, but instead lay down between tracks and was injured by a passing train; where a groom should have led a horse, but instead rode it; and where a miner, against orders, but for a purpose of his work, ascended out of a mine in a hoisting bucket.[20]

Under the FRENCH law, the fact that the victim's fault[21] has contributed is immaterial,[22] except that if the fault is found to be "inexcusable" the rate of compensation is cut in half.[23] Thus where a boy lost the ends of his finges in the gears of a machine with which he was playing,[24] where a boy, during the noon hour, was injured while "fooling" with a rolling machine, at some distance from his post of duty;[25] where a workman was injured while using an extra steam saw in the factory to make something for himself,[26] and where a workman, leaving his post of duty, was hurt in another room into which he was forbidden to enter,[27] the accidents were held to have been caused or occasioned by the work. Only outside of the employer's establishment, the workman must keep to his proper route or place and within proper time, and his fault in not so doing deprives him of the protection of the law.[28]

THE VICTIM'S WEAKNESS OR SICKNESS. When the original cause of an accident is the workman's sickness or weakness, but the immediate cause of injury is a "trade risk," the accident arises out of the work.[1]

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[15] Edmunds v. S.S. "Peterston" (1911), 5 B. 157.

[16] Handbuch, pp. 78, 79, 253. Where an accident is intentionally brought about the law does not apply; and where it is caused by a crime or the deliberate commission of a wrong, compensation may be refused or reduced; id., p. 248.

[17] Id., p. 79.

[18] Id., pp. 78, 79, 253.

[19] Id., p. 79.

[20] Id., pp. 88-89.

[21] Accidents intentionally brought about by the injured person are not covered: Act of April 9, 1898, Art. 20.

[22] Cf. Cass. civ., Feb. 17, 1902; id., July 8, 1903.

[23] Act of April 9, 1898, Art. 20.

[24] Cass. civ., Feb. 17, 1902.

[25] Cass civ., July 8, 1903.

[26] Cour d'Appel de Nancy, March 29, 1905.

[27] Cass. civ., July 19, 1911.

[28] Cf. "Journeys, etc.," supra, p. pp. 28-29.

[1] As to when an injury is deemed to be "by accident," see under "Injury by Accident" supra.

Under the BRITISH law, where a stevedore, working by an open hold of a ship, had an epileptic fit, fell down the hold and was inujred, it was held that the accident arose out of the employment.[2 a] But the contrary was held where the master of a workhouse, sitting at the top of some ordinary steps leading to the house, had a fit of coughing, which made him giddy so that he fell down the steps,[3] and where a messenger fainted on the street from heat and was injured by his head striking the pavement.[4 b]

Under the GERMAN law, where a workman had a fit near a boiler and fell into the hot ashes, the accident was held to be connected with the work.[5]

Under the FRENCH law, on the other hand, where a workman in a fit of apoplexy fell and hurt himself on the smooth floor of his workplace, it was held that neither the accident nor the injury had any causal relation with the work.[6]

"LARKING."[1] Under the BRITISH law it is held that "larking" is not within the sphere of employment and therefore that accidents due to larking do not arise out of the employment.[a] Accordingly in the following cases the accidents were held not to come under the law: Where two colliers in a mine interfered with the work of a third and in the course of some larking that followed the third one was injured.[2] Where a boy, while cleaning a machine at rest, indulged in horse play with another boy, whereby he accidentally started the machine and was injured.[3] Where a boy, employed about a machine, deliberately removed the guard from the pinion wheels, and hurt himself playing with them.[4] Where one workman tapped another on the back, and, receiving a retaliatory push, fell and was injured.[5] Where two boys employed in a factory, in play set in motion some wagons on an inclined railway, and in trying to stop the wagons one of the boys was hurt.[6]

The same rule is applied even though the victim was not participating in the larking.[7 b]

Under the GERMAN law, only under exceptional circumstances are accidents to adults due to "larking," etc., deemed to arise out of the work.[8] As to children the rule is different. In children, it is held, there is such a strong inclination to play with companions, to "fool" with machinery and to imperil themselves in dangerous place, that they should not be employed amid dangerous surroundings which excite such inclinations without being strictly watched; and where they are so employed and are injured in consequence the accidents should be deemed to arise out of

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[2] Wicks v. Dowell (1905), 7 M.-S. 14.
[3] Butler v. Burton Union (1912), 5 B. 355.
[4] Rodger v. Paisley School (1912), 5 B. 547; and cf. Thackway v. Connelly (1909), 3 B. 37.
[5] Handbuch, p. 80.
[6] Tribunal de Grenoble, July 23, 1900.
[1] Cf. also under three following titles.
[2] Burley v. Baird (1908), 1 B. 7.
[3] Cole v. Evans (1911), 4 B. 138.
[4] Furniss v. Gartside (1910), 3 B. 411.
[5] Wrigley v. Nasmith (1913), 6 B. 90.
[6] Lanarkshire Co. v. Powell (1904), 42 Sc. L. R. 231; but cf. Rees v. Thomas (1899), 1 M.-S. 9.
[7] Cf. "Fault of Co-employee," post, p. 52. Contrast with German rule, post.
[8] Handbuch, p. 79.

[a] To similar effect, Carroll v. What Cheer Co. (R. I., 1916), 96 Atl. 208.
[b] To similar effect, Collins v. Brooklyn Gas Co. (N. Y., 1916), 171 App. Div. 382; and cf. Pigeon's Case (1913), 216 Mass. 51.
[a] Federal Co. v. Havolick (Wisc., 1916), 156 N. W. 143; and cf. Pierce v. Boyer-VanKeenan Co. (Neb., 1915), 156 N. W. 509; De Filippis v. Falkenberg (N. Y., 1915), 170 A. D. 153.
[b] De Filippis v. Falkenberg, supra; *contra*, Hulley v. Moosbrugger (1915), 87 N. J. L. 103; Knapp v. American Car Co. (1914), 186 Ill. App. 605.

risks of the work.[9] Upon this theory, where a farm boy hurt his fingers in the cams while playing with a fodder cutter, and where a factory boy was injured in play while climbing over a wagon in the workplace, in pursuit of a companion, the accidents were held to have been due to the work.[10]

Even as to adults accidents due to "larking" with co-employees are deemed to arise out of the work if a special danger of the work has contributed to their causation or has aggravated their consequences, it being a special purpose of the law to cover the risks due to the juxtaposition of many persons amid dangerous surroundings.[11] Accordingly in the following cases the accidents were held to have arisen out of the work: Where in the course of a friendly "scrap" between two workmen, one fell against the piston rod of an engine;[12] and where, on a hurry job, one workman having offered to help another, the latter refused, and, in the course of a scuffle that ensued, the former broke his foot over some rails that crossed the floor.[13] But the contrary was held in the following cases: Where in the course of a wrestling bout in a factory between two workmen one was hurt by a fall on the level floor;[14] and where one workman, in fun, challenged a fellow workman to aim a gun at him, and as a consequence was accidentally shot.[15]

Under the FRENCH law accidents due to larking at the place and during the time of work are generally covered. Where the larking is with a co-employee it is held to be occasioned by the work, because it is the work that brings the parties together,[16] though if it is the victim who originally provokes the mischief his compensation may be reduced for inexcusable fault[17] And where it consists in playing with a dangerous machine, etc., and the injury is directly caused by such machine, the accident, by definition, is caused by the work.[18]

QUARRELS AMONG CO-EMPLOYEES.[1] Under the BRITISH law the question seems to be whether the accident is due to a peril involved by the contract of service or to an added peril to which the victim by his own conduct has exposed himself. Accordingly where a workman was injured in a quarrel over the possession of a brush he was using in his work but which belonged with the machine of the other party to the quarrel, it was held that the accident arose out of the employment.[2] [a] But the contrary was held where a workman, having deliberately and for no apparent reason assaulted a comrade, was accidentally injured by a tool raised by the latter in a movement of self-defense.[3]

Under the GERMAN law a quarrel between co-employees in the course of their work is deemed to arise out of the work only where it arises over a subject connected with the work, as where two workmen quarrel over the possession of tools they have to share in common,[4] or

[9] Handbuch, pp. 79-80.
[10] Id., p. 80.
[11] Id., p. 80.
[12] Id., p. 81.
[13] Id.
[14] Id.
[15] Id.
[16] Cass. civ., July 8, 1903.
[17] Cass. civ., April 20, 1912.
[18] Cf. under "Arising Out of," supra, p. 19.
[1] Cf. under next preceding and two following titles.
[2] McIntyre v. Rodger (1903), 41 Sc. L. R. 107.
[3] Shaw v. Wigan (1909), 3 B. 81.
[4] Handbuch, p. 84.

[a] To similar effect, Heitz v. Ruppert (1916), 218 N. Y. 148; Western Indemnity Co. v. Pillsbury (Cal., 1915), 151 Pac. 398.

where the quarrel is started or provoked by the party other than the injured workman.[5]

Under the FRENCH law an injury resulting from a quarrel originating at the place and during the time of work is held to be occasioned by the work, since it is the work that brings the parties together.[6] But it has been held that where the quarrel is the consequence of old personal differences it is not caused or occasioned by the work.[7]

FAULT OF CO-EMPLOYEE.[1] Under the BRITISH law if an accident arises from the fault or negligence of a fellow servant while engaged in his work, [a] it arises out of the employment; but not where it is due to larking by fellow servants.[2] [b] In the following cases the accidents were held to have arisen out of the employment: Where a blacksmith at his work was knocked over and injured by two of his fellow workmen who were larking.[3] Where, while a workman was engaged at his task, some fellow workmen, as a joke, attached the hook of a hoist to his collar, with the result that he was lifted high in the air, fell and was injured.[4] Where a boy at work was hit in the eye by a piece of iron thrown in anger by another boy at a third boy.[5] Where a domestic servant at work was hit in the eye by a child's ball thrown at her in fun by a fellow servant, the child's nurse.[6] Where a domestic servant, while at her work, was accidentally shot by a gun pointed at her in fun by a fellow servant, a farm laborer, who was using the gun to drive crows off his employer's crops.[7]

Under the GERMAN law accidents due to faults or negligence of co-employees are generally covered, it being held to be one of the principal purposes of the compensation law to cover such risks.[8] Accordingly the accidents in the following cases were held to have been due to the work: Where a workman was hit on the head by a bottle negligently dropped by a co-employee working above him.[9] Where a workman, taking a drink, was hurt in the hand by a tin drinking cup being violently snatched away by a comrade.[10] Where a workman was injured by the explosion of a stove caused by a fellow workman's putting caps in it for a joke.[11] Where a workman was hurt by a piece of glass from a lampshade, which a fellow workman knocked off in a fit of impatience.[12] Where a workman was hit by a missile thrown by a co-employe at a foreman.[13] Where a workman, intent upon his work, was injured by something thrown at him by a co-employee in a spirit of mischief.[14] Where a workman, intent upon his work, was injured by co-employees quarreling near him.[15]

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[5] Handbuch, p. 80; and cf. "Fault of Co-employee," post.
[6] Cass. civ., April 20, 1912.
[7] Cass. req., April 13, 1910; and cf. "Assaults," post. p. 54.
[1] Cf. also under two preceding and next following titles.
[2] Cf. Falconer v. London Co. (1901), 31 Sc. L. R. 381. Cf. Gibson v. Dunkerley (1910), 3 B. 345, affid. in Lees v. Dunkerley (H. L., 1911), 4 B. 115. Contrast with German rule, post.
[3] Falconer v. London Co., supra.
[4] Fitzgerald v. Clarke (1909), 1 B. 197.
[5] Armitage v. Lancashire R'y (1902), 4 M.-S. 5.
[6] Wilson v. Laing (1909), 2 B. 118.
[7] Hillis v. Shaw (1913), 47 Ir. L. T. R. 221.
[8] Cf. Handbuch, p. 80.
[9] Id., p. 82.
[10] Id., p. 81.
[11] Id.
[12] Id.
[13] Id., p. 82.
[14] Id.
[15] Id., p. 84.

[a] Scott v. Payne (1914), 85 N. J. L. 446; Salus v. Gt. Northern Ry. (1914), 157 Wisc. 546; and cf. Bryant v. Fissell (1913), 84 N. J. L. 72 (fault of fellow workman in employ of another employer).
[b] See citations under "Larking," supra, p. 50.

The FRENCH law on this point is similar to the German.[16]

INTENTIONAL ASSAULTS. Under the British law injuries by assaults generally are deemed to be accidents arising out of the employment only where the risk of assaults is especially incidental to the particular employment.[1 a] Accordingly in the following cases it has been held that assaults were accidents arising out of the employment: Where the engineer of a steam trawler was injured by its being blown up by an enemy's floating mine.[2] Where a cashier was attacked, murdered and robbed while carrying money to pay wages.[3] Where a gamekeeper was attacked by poachers.[4] Where a schoolmaster of a board school, where there had been trouble, was assaulted by the scholars and killed.[5] Where a foreman of a van company, with a very rough class of customers, was attacked by a member of the public because he refused to let the latter have a van.[6]

But in the following cases assaults were held not to have arisen out of the employment: Where a contractor on sewage works got into a fight with drunken fishermen and an employee, going to his assistance, was injured by them.[7] Where a cook in a hotel was injured in running away from a drunken guest who attempted to catch her.[8] Where several boys were "picking coal" together, and one deliberately threw a piece of coal at the other in anger, and injured him.[9] Where a carter on a public street was assaulted by a drunken man whom he had warned to stop hitting his horse.[10] Where an errand boy was attacked by his employer in a fit of insanity.[11]

However, where an iron moulder, working amid pots of molten metal, was assaulted by an intoxicated intruder, thrown down amid the pots and badly burned, it was held that the accident arose proximately from risks of the employment, though there was no special risk of the original cause of the accident—the assault.[12]

Under the GERMAN law, where the cause is personal and not connected with the work, an assault, though at the time and place of work, is not covered by the law.[13] And it does not suffice that the origin of the quarrel had some vague connection with the work or that the surroundings furnished the opportunity.[14] Thus where two miners were working together alone in a lonely place and one struck the other from behind with murderous intent, knocking him into a deep cutting, it was held that the

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[16] Cour d'Appel de Douai, Aug. 7, 1900; Cass. civ., April 23, 1902.

[1] Clayton v. Hardwicke Colliery Co. (1914), 7 B. 643; Weekes v. Stead (1914), id., 398; and cf. Challis v. London & S. W. R'y (1905), 7 M.-S. 23, cited under "Street Accidents," post.

[2] Risdale v. S.S. "Kilmarnock" (1914), 8 B. 7.

[3] Nisbet v. Rayne (1910), 3 B. 507.

[4] Anderson v. Balfour (1910), 3 B. 588.

[5] Trim Dist. School v. Kelly (H. L., 1914), 7 B. 274.

[6] Weekes v. Stead, supra.

[7] Collins v. Collins (1907), 2 Ir. R. 104.

[8] Murphy v. Berwick (1909), 2 B. 103.

[9] Clayton v. Hardwicke Colliery Co. (1914), 7 B. 643; and cf. Bateman v. Albion Co. (1914), id. 47.

[10] Mitchinson v. Day (1913) 6 B. 190.

[11] Blake v. Head (1912), 5 B. 303.

[12] Shaw v. Macfarlane (1914), 8 B. 382.

[13] Handbuch, p. 83.

[14] Id., p. 83.

[a] Cf. McNichols' Case (1913), 215 Mass. 497 (intoxicated coemployee); Reithel's Case (1915), 222 Mass. 163 (superintendent shot by disorderly person whom he was ejecting); Clark v. Clark (Mich., 1916), 155 N. W. 507 (carpenter hit by missile thrown by employer's enemy). And cf. also Harbroe's Case (Mass., 1916), 111 N. E. 709 (night watchman shot by mistake by deputy sheriff in pursuit of bank robber).

assault had no causal relation with the work.[15] But where two laborers, A and B, were working together, and A accidentally struck B on the foot, causing intense pain, whereupon B in sudden anger struck A violently on the head, it was held that the assault was caused by the work.[16] And the same was held where a workman, after a quarrel with a fellow workman, because the latter had complained of him to their employer, went secretly to where the dinner pails were kept and put poison in the latter's food.[17]

Where a foreman or other superior is assassinated or assaulted by a subordinate whom he has discharged, disciplined or reproved, the "accident" is connected with the work.[18] Generally it makes no difference that the superior has used improper language in administering his reproof.[19] And the rule is the same where a workman is assaulted for criticising a fellow workman of equal grade.[20] It has been held to be an accident connected with the work where a foreman struck an apprentice on the arm, for "dawdling," so violently as to injure him.[21] Where a master miner was assaulted for refusing admission to the mine to a drunken employee, where a railroad crossing guard was assaulted for forcing a co-employee off the tracks, where a workman, coming to work, was assaulted by strikers at the entrance to the plant, and where a mine boss, going out on an errand, was injured by a bomb planted at the entrance by strikers, the assaults were held to be accidents connected with the work.[22]

Where a workman is assaulted by a drunken or crazy co-employee, the injury results from a risk of the work.[23] Where a workman is assaulted by strangers while guarding his employer's property, the "accident" is connected with the work. It was so held where a watchman was struck and injured by a missile thrown at him by thieves.[24] And in the following cases also assaults were held to be connected with the work: Where a street car conductor was struck in the eye by a passenger he was ejecting; where the foreman of a street cleaning gang was struck by a stranger while he was trying to stop a fight between that stranger and a subordinate; where the driver of a coal wagon, delivering coal on the sidewalk in front of a house, was assaulted by applicants for the job of putting it into the house, because he had previously and on similar occasions prevented their "grafting" coal and offended them in other similar ways.[25]

Under the FRENCH law where a workman was assaulted by a co-employee because of personal ill feeling not growing out of their work, it was held that the law did not apply.[26] But where a foreman was assassinated by a discharged employee,[27] where a workman was assaulted by a co-employee whom he had properly reproved,[28], where a workman was assaulted by a drunken co-employee,[29] and where a paymaster was attacked

[15] Handbuch, p. 83.
[16] Id., pp. 83-84.
[17] Id., p. 85.
[18] Id., pp. 86-87.
[19] Id., p. 86.
[20] Id., p. 87.
[21] Id.
[22] Id., pp. 85-87.
[23] Id., p. 78.
[24] Id., p. 87.
[25] Id., pp. 87, 85.
[26] Cass. req., April 13, 1910.
[27] Cass. req., June 2, 1913.
[28] Tribunal de Vienne, Feb. 27, 1902.
[29] Cour d'Appel de Paris, Oct. 25, 1910.

and wounded by robbers,[30] it was held that the "accidents" were caused or occasioned by the work.[31]

Under the *German* and *British* laws the assault must occur in the course of the work, and according to the *French* decisions it must occur during the time and at the place of work. The furthest any of these rules has been stretched was in a German case, where a foreman, while on the way from his home to the workplace and "in the neighborhood of" the latter, was attacked by an aggrieved subordinate.[32] On the other hand, in a British case where an employee on his way home and about seven minutes' walk from his employer's establishment was attacked by strikers, it was held that the accident did not occur in the course of the employment.[33]

STREET ACCIDENTS. Under this title are grouped all classes of accidents due to the special risks encountered in public places.

Under the BRITISH law "street risks" are incidental to the employment only where the employment entails an exceptional exposure to them.[1 a] If a workman is injured by accident arising out of a course or state of circumstance to which all persons are more or less exposed, such as street traffic, severe weather, etc., the question, broadly put, is whether the workman's exposure to it was abnormal or excessive by reason of his employment. There must be some special risk incident to the employment, a risk which imposes a greater danger upon the employee than upon an ordinary member of the public.[2]

Accordingly where a servant girl, who was sent down the street about a hundred yards from the house to post a letter in a post box, slipped on a banana peel, fell and was injured, it was held that the accident did not arise out of the employment.[3] And the same was held where a workman, sent across the street during the lunch hour for some materials, hurried unnecessarily and was struck by a car;[4] where a drover's boy, riding a bicycle from one farm to another, was thrown and hurt by his own dog getting in his way;[5] where the manager of a branch shop, who used a bicycle about an hour a week in his work, was hurt by its skidding on the road;[6] and where an employee, taking a message on a hot day, fainted in the street and hurt his head in falling.[7] But where a collector and canvasser, using a bicycle on the street for his work, with his employer's knowledge, was knocked down and killed by a tramcar, it was held that the accident arose out of the employment.[8] And the same was held where a salesman and collector, similarly using a bicycle for his work, was kicked by a passing horse;[9] where a cattle drover was run down on the road by a motor car;[10] where a carter was run down coming

[30] Tribunal de la Seine, Feb. 7, 1905.
[31] Cf. also cases cited under "Street Accidents," infra.
[32] Handbuch, p. 87.
[33] Poulton v. Kelsall (1912), 5 B. 318.
[1] Pierce v. Provident Co. (1911), 4 B. 242.
[2] Sheldon v. Needham (1914), 7 B. 471.
[3] Id.
[4] Symonds v. King (1915), 8 B. 189.
[5] Greene v. Shaw (1911), 5 B. 573.
[6] Slade v. Taylor (1915), 8 B. 65.
[7] Rodger v. Paisley School (1912), 5 B. 547.
[8] Pierce v. Provident Co. (1911), 4 B. 242.
[9] M'Neice v. Singer Co. (1911), 4 B. 351.
[10] Bate v. Worsey (1912), 5 B. 276.

[a] Cf., "arising out of," Milwaukee v. Althoff (1914), 156 Wisc. 68 (defect in sidewalk); Hendricks v. Seeman Bros. (N. Y., 1915), 170 App. Div. 133 (driving boys away from delivery wagon); "not arising out of," Hopkins v. Michigan Sugar Co. (1915), 184 Mich. 88 (slipping on ice on street).

out of a public house into which he had gone to get a drink;[11] where an engine driver was hit in the eye by a stone dropped by a boy from a bridge,[12] and where a taxi driver was shot by a sentry when driving an officer to a post on a stormy night.[13] But the rule indicated in some of the foregoing cases, that the criterion is the frequency with which the workman is exposed to the risks of the road, is not firmly established. Where a coachman only occasionally rode a bicycle a comparatively short distance to get the mail an accident on the journey was recently held, by the Scotch Court of Sessions, to have arisen out of the employment.[14]

Under the GERMAN law, to establish a causal connection between the work and an accident from a public risk the work must entail some special exposure to that risk.[15] In the following cases it was held that there was such special exposure: Where a woodsman was accidentally shot by a forester.[16] Where a lamplighter, lighting a street lamp, was accidentally hit by a stone thrown by a boy in a street fight with other boys.[17] Where a workman at the top of a ladder, thatching a roof, was thrown by the ladder being knocked down by a passing vehicle.[18] Where a horse-car driver was struck by a passing hack while changing his horses.[19] Where a tramway inspector, examining the rails, was run down by a passing team.[20] Where a driver or motorman got a cinder from a passing locomotive in his eye.[21] Where a roadman, measuring a road, slipped on some ice and fell.[22] Where a driver was struck on the head by a box falling from the hatchway of the gate of a storehouse into which he was driving.[23]

Under the FRENCH law, it seems, all accidents on public roads occurring "during the time and at the place of work" are deemed to be work accidents, unless due to the action of forces of nature.[24] Accordingly it was held that the following were work accidents: Where a truckman driving on the street was struck by a stone thrown by a boy in play.[25] Where a carter, loading his truck on the street, got into a quarrel with a passerby over the work, and was injured.[26] But where a tramway driver got a cinder in his eye it has been held that the accident was due to a risk common to all, and had no causal connection with the work.[27]

NEIGHBORHOOD RISKS. Under this head are considered those comparatively rare accidents which occur in the employer's establishment, but which originate in acts or faults of persons or things outside.

Under the BRITISH law such cases are governed by the same principles as street accidents; in other words, there must be some special exposure. Applying that test, the accidents in the following cases were

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[11] Martin v. Lovibund (1914), 7 B. 243.
[12] Challis v. London & S. W. R'y (1905), 7 M.-S. 23 .
[13] Thom v. Humm (1915), 8 B. 190.
[14] Bett v. Hughes (1915), 8 B. 362.
[15] Cf. Handbuch, p. 95; and cf. "Journeys, etc.," supra, p. 45.
[16] Id., p. 82.
[17] Id.
[18] Id., p. 96.
[19] Id.
[20] Id.
[21] Id.
[22] Id.
[23] Id., p. 97.
[24] Cf. cases cited under "Arising Out of," supra, p. ——.
[25] Cass. civ., Aug. 1, 1906.
[26] Cass. civ., May 16, 1911; cf. Tribunal de la Seine, March 16, 1910.
[27] Cour d'Appel de Bordeaux, March 26, 1907.

held to have arisen out of the employment: Where a ship's carpenter, working among inflammable shavings on the poop deck of a ship by a dock, was burned by a fire in the shavings started by a match thrown by someone on the dock,[1] and where a laborer at work in his employer's yard in a bent-over position, so that he could not see and avoid falling objects, was hit by a slate blown from the roof of an adjoining building.[2] But the contrary was held where a carter, leading his horse out of his employer's yard, was struck by a piece of corrugated iron blown off a neighboring roof by a high wind.[3]

Under the FRENCH law, where an employee in a workshop was injured by an explosion in an adjoining building, it was held that the accident was covered by the law, on the extreme ground that all accidents occuring during the time and at the place of work are work accidents even though occasioned by cicumstances unconnected with the work, other than the action of forces of nature.[4]

RISKS FROM INSECTS, ANIMALS, ETC. Under the BRITISH and GERMAN laws accidents by bites of insects, etc., and attacks by animals, are not deemed to arise out of the employment, unless the work entails some special exposure to the risk. Accordingly where a workman was stung by a wasp hovering around a pitcher which he kept near at hand during his work for drinking,[1] where a farmhand, while driving a threshing machine, was stung by a wasp,[2] and where a maidservant, sitting by an open window in a lighted room in the evening, injured her eye with her hand in striking at a cockchafer which had flown into her face,[3] it was held that the accidents did not arise out of the work. But the contrary was held where a forester was poisoned by insects while making his way through a swamp,[4] where a man-of-all-work in the employ of a lion tamer was left in charge of the menagerie, and was injured trying to drive a lion that had escaped back into its cage,[5] and where a teamster, taking his lunch in his employer's stable, was attacked and hurt by the stable cat.[6]

POISONINGS.[1] Under the BRITISH law, where a seaman was poisoned by drinking the contents of another seaman's water can, which he found in a cool place on the ship, and which contents proved to be caustic soda, it was held that the poisoning was an accident arising out of the employment.[2] [a]

Under the GERMAN and FRENCH laws the general risks of poisoning by bad food or drink must be borne by the workman.[3] But where a foreman was provided with food from his employer's kitchen, because he had to remain continuously at the factory, and was one day poisoned by such food,[4] where a cook was poisoned by drinking from a mineral

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[1] Manson v. Forth Co. (1913), 6 B. 830
[2] Anderson v. Adamson (1913), 6 B. 874.
[3] Kinghorn v. Guthrie (1913), 6 B. 887; and cf. "Forces of Nature," post, p. 59.
[4] Cass. civ., Jan. 24, 1912. Cf. note 12, supra, p. 19.
[1] Handbuch, p. 77.
[2] Amys v. Barton (1912), 5 B. 117 .
[3] Craske v. Wigan (1909), 2 B. 35.
[4] Handbuch, p. 77.
[5] Hapelman v. Poole (1908), 2 B. 43.
[6] Rowland v. Wright (1909), 1 B. 192.
[1] For infections, etc., see under "Injury by Accident," supra.
[2] McKinnon v. Hutchison (1915), 8 B. 624.
[3] Handbuch, p. 111.
[4] Id., p. 112.

[a] To similar effect, Archibald v. Ott (W. Va., 1916), 87 S. E. 791; and cf. poison-ivy case, Plass v. Central R. R. (N. Y., 1915), 169 App. Div. 826; but cf. O'Neil v. Carlay (N. Y., 1916).

water bottle which he kept near at hand for that purpose, but which a fellow servant, during his absence, had emptied and filled with cleaning fluid.[5] where a workman at lunch, thinking to drink out of his water bottle, inadvertently drank from a bottle of poisonous liquid used in the trade,[6] and where some factory hands found an attractive looking bottle suspiciously hidden away in their workplace and drank its contents without knowing what they were, and they proved to be a poisonous fluid used in the trade,[7] it was held that the accidents arose out of risks of the work. The contrary, however, was held where a workman in a chemical factory abstracted a bottle of methyl alcohol from the storeroom, and, though he knew what it was and that it was not fit to drink, nevertheless drank it.[8]

FORCES OF NATURE. Under the BRITISH law, to connect an injury by lightning, sunstroke, excessive natural heat or cold, etc., with the employment, there must be some special risk incidental to the employment, a risk which imposes a greater danger upon the workman than upon an ordinary member of the public.[1] [a]

So where a bricklayer was killed by lightning when working in a very exposed position twenty-three feet above the ground level, it was held that the accident arose out of the work.[2] But the contrary was held where a ditch-cleaner was struck by lightning on an open road.[3]

Where a seaman was struck while painting the side of a ship in the tropics, exposed to direct and reflected rays from the sun,[4] and where a seaman in the tropics was sunstruck standing watch for five hours on an unsheltered part of the deck,[5] the accidents were held to have arisen out of the work. But the contrary was held where a plumber, in a state of impaired vitality, suffered a sunstroke while laying pipes through a cut in a road,[6] and where a janitor taking a message on a hot day fainted and fell on the street.[7]

In a different category belong the cases where the extreme heat out of which the accident arises is caused by the work and not by nature.[8] In an intermediate case, where an engineer, physically run down, collapsed from heat in his engine room, the heat being unusually severe because the steamer was in the tropics, it was held that it was an accident arising out of the employment.[9]

Where a baker suffered an injury to his hand by "frost bite" on a cold winter day, while driving on his rounds in his employer's cart, there being nothing in the nature of the employment which exposed him to more than the ordinary risk of cold to which anyone working in the open was exposed on that day, it was held that the accident did not arise out of the employment.[10] And the same was held where a seaman suffered a

[5] Cass. req., Nov. 22, 1909.
[6] Handbuch, p. 113.
[7] Id., p. 113.
[8] Handbuch, p. 112.
[1] Sheldon v. Needham (1914), 7 B. 471.
[2] Andrew v. Failsworth Soc. (1904), 6 M.-S. 11.
[3] Kelly v. Kerry Council (1909), 1 B. 194.
[4] Morgan v. S.S. "Zenaida" (1909), 2 B. 19.
[5] Davies v. Gillespie (1911), 5 B. 6.
[6] Robson v. Blakey (1912), 5 B. 536.
[7] Rodger v. Paisley School (1912), 5 B. 547.
[8] Ismay v. Williamson (1908), 1 B. 232; Johnson v. S.S. "Torrington" (1909), 3 B. 68; Kelly v. Auchinclea Co. (1911), 4 B. 417; Broforst v. Blomfield (1913), 6 B. 613.
[9] Maskery v. Lancashire Co. (1914), 7 B. 428.
[10] Warner v. Couchman (1911) 5 B. 177.

[a] Klawinski v. Lake Shore R. R. (1915) 185 Mich. 643; Hoenig v. Industrial Commission (1915), 159 Wisc. 646; but cf. State ex rel. v. District Court of Ramsey Co. (1915), 129 *Minn. 502.*

similar injury while working on a ship at Halifax, N. S., he being exposed to no more risk from cold than is usual in winter at Halifax.[11]

To be distinguished are the cases where the exposure to wet or to a cold draught is not itself an accident but is a consequence of an accident in the work.[b] Thus where a miner, sweating from his work, had to stand in a cold draught owing to a breakdown of the hoisting machinery, took cold and died,[12] and where a miner was wetted and having to wait in a cold draught to get out of a mine, because it was flooded through a breakdown in the machinery, took cold and died,[13] it was held that the injuries were caused by accidents arising out of the employment.

Also to be distinguished are those cases where a disease arises out of special exposure to wet or cold in the usual course of the work, without any accident.

As to injuries by objects blown by high winds, see "Neighborhood Risks."[14]

Under the GERMAN law a rule has been developed that where an accident is due to a natural phenomenon, it is to be assumed, in the absence of proof to the contrary, that if the workman had not been at his place of work he would not have been exposed to the same danger.[15]

This rule is applied where workmen are struck by lightning. The victim, however, must have been at his post of duty or close to it—400 meters away being too far. But where a field hand was struck by lightning under a cliff where he had taken refuge only a little way off from where he had been working, the accident was held to have arisen out of a risk of the work.[16]

Sunstroke, however, is held to be a work accident only where the kind or place of work appreciably increases the natural heat or aggravates its effects. Where sunstrokes suffered by masons, carpenters, etc., have been held to be work accidents, there was in every case something aggravating the direct heat from the sun, such as exposure to reflected heat, etc.[17]

Injuries due to exposure to wet or cold are held to be accidents connected with the work only where there has been something sudden and unusual about the event and some special exposure to the risk incidental to the work. The following have been held to be such cases: Where a chimney sweep had to walk some five miles through a sudden blizzard in thin, tight clothes, hampered by his tools, and was frozen to death. Where a stone-breaker froze his toes in a sudden extreme cold spell. Where a teamster fell asleep on his wagon, because of extreme cold, and froze his feet. Where a miller, on account of a sudden flood, had to work several hours in icy water, and caught cold and died.[18]

The FRENCH courts hold in principle that the law does not apply to accidents due to the action of forces of nature, even though they occur during the time and at the place of work, unless the work has contributed to putting such forces in motion or has aggravated their effects.[19]

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[11] Karemaker v. S.S. "Corsican" (1911), 4 B. 295.

[12] Brown v. Watson (1914), 7 B. 260. Cf. McLuckie v. Watson (1913), 6 B. 850.

[13] Drylie v. Alloa Co. (1913), 6 B. 549. In this case the chain of causation between the "accident" and the death was badly broken by a period of neglect; but the higher court was bound by the arbitrator's finding of fact upon that point.

[14] Supra, p. 56.

[15] Handbuch, p. 77.

[16] Id.

[17] Id., pp. 72, 77.

[18] Id., p. 72.

[19] Cass. civ., Dec. 10, 1902; id., March 2, 1904; Cass. req., June 8, 1904; id., April 30, 1912.

[b] Cf. Rist v. Larkin (N. Y., 1916), 171 App. Div. 71.

Accordingly where a laborer at a railway station,[20] a ditch-digger,[21] and the driver of a covered delivery wagon[22] were sunstruck, there being no proof that their work exposed them extraordinarily to the sun, the accidents were held to have been neither caused nor occasioned by the work but to have been due to *force majeure*. But where a carter was sunstruck while unloading his wagon in a close court, needlessly exposed to the sun, under conditions which aggravated the natural heat, it was held that the accident was occasioned by the work.[23]

Where an employee traveling by train from one workplace to another was struck by lightning it was held, in the absence of anything to show that what he was doing contributed to bring about the lightning stroke, that the accident must be ascribed to *force majeure*.[24] Where a workman was drowned during the time and at the place of work by a sudden flood, which swept the entire neighborhood, it was held that the accident was due to *force majeure*.[25] But where a watchman in a building was injured by its being blown down by a high wind, upon a finding that the collapse of the building was due to its weakness and not to a tornado, it was held that the accident arose out of the work.[26]

PROOF

THE BRITISH LAW. The burden of proving that there was an injury by accident is upon the claimant; and where the evidence is equally consistent with an accident or no accident the burden has not been discharged.[1 a] The burden also rests upon the claimant to prove that the accident arose out of and in the course of the employment,[2 b] and that the final injury claimed upon—whether death or incapacity—resulted from the accident.[3]

All the foregoing are questions of fact for the trial judge as arbitrator.[4 c] The proof need not be direct, but may be by circumstantial evidence; however, there must be facts proved from which an inference may legitimately be drawn, as distinguished from mere conjecture, surmise or guess.[5 d] No general rule can be laid down as to drawing inferences; but in general a finding by the arbitrator will not be disturbed

[20] Cass. civ., Dec. 10, 1902.
[21] Cass. req., June 8, 1904.
[22] Cass. req., June 21, 1903.
[23] Cass. civ., March 2, 1904.
[24] Cass. req., April 30, 1912.
[25] Tribunal de Marseille, May 19, 1908.
[26] Cour d'Appel de Nancy, July 24, 1903.
[1] Barnabas v. Bersham Co. (H. L., 1910), 4 B. 119.
[2] Pomfret v. Lancashire R'y Co. (1903), 5 M.-S. 22; O'Brien v. Star Line (1908), 1 B. 177
[3] Hugo v. Larkins (1910), 3 B. 228; Browne v. Kidman (1911), 4 B. 199; Marshall v. Sheppard (1913), 6 B. 571; Honor v. Painter (1911), 4 B. 188; Paton v. Dixon (1913), 6 B. 882: and cf. Swinbank v. Bell (1911), 5 B. 48.
[4] Cf. Warnock v. Glasgow Co. (1904), 41 Sc., L. R. 359; Smith v. Coed Colliery (1900), 2 M.-S. 121; Snedden v. Greenfield Co. (1910), 3 B. 557; Powers v. Smith (1910), 3 B. 470; Dean v. London & N. W. R'y (1910), 3 B. 353; Cameron v. Port of London (1912), 5 B. 416; Rayman v. Fields (1910), 3 B. 123. However, the interpretation of the terms of the statute raises questions of law, Fenton v. Thorley (H. L., 1903), 5 M.-S. 1, so that these are in a sense mixed questions of law and fact.
[5] Cf. Chandler v. Gt. Western R'y (1912), 5 B. 254; Perry v. Ocean Co. (1912), 5 B. 421; and cf. Pugh v. Dudley (1914), 7 B. 528. But as to weighing probabilities, see Ship "Swansea Vale" v. Rice (H. L., 1912), 4 B. 298.

[a] Cf. Sponatski's Case (1915), 220 Mass. 526.
[b] Savage's Case (Mass., 1916), N. E. 283; Hills v. Blair (1914), 182 Mich. 20; McCoy v. Michigan Screw Co. (Mich., 1914), 147 N. W. 572; Bryant v. Fissell (1913), 84 N. J. L. 72; Reimers v. Proctor (1914), 85 N. J. L. 441.
[c] Savage's Case, supra; and cf. Zappala v. Industrial Commission (1915), 82 Wash. 314 (interpretation of terms of statute, questions of law).
[d] Cf. Collins v. Brooklyn Gas Co. (N. Y., 1916), 171 App. Div. 382; Voelz v. Industrial Commission (1915), 161 Wisc. 240; Poccardi v. Public Service Commission (W. Va., 1915), 84 S. E. 342; Fisher's Case (1915), 220 Mass. 581.

unless it is such that a reasonable man would not have arrived at it.[6] [e] On the other hand, an arbitrator's award cannot stand unless the facts found are sufficient to entitle him reasonably to infer his conclusions from them.[7] [f]

Where after injury by accident the workman neglects proper precautions or is guilty of other misconduct, the burden is upon the employer to break the chain of causation and to show that subsequent incapacity is due, not to the accident, but to the victim's neglect or misconduct.[8] Where the employer contends that an injury apparently resulting from an accident is really the consequence of another and older accident or injury, the burden is on him to prove it.[9] And the burden of proving serious and wilful misconduct is on the employer.[10]

Suicide being a crime cannot be inferred; and there is a presumption against it.[11] [g] On the other hand, where suicide follows a painful and depressing injury, insanity cannot be inferred as its cause in the absence of any evidence to prove it.[12]

Statements made by a deceased workman in the absence of his employer, though evidence of his bodily or mental sensations at the time, are not admissible as evidence against the employer of the cause and occasion of the accident or injury.[13] [h] And statements by a deceased workman as to the cause of his injury are not admissible for the employer and against the workman's dependents, unless it be shown that, to the knowledge of the deceased, they were against his pecuniary interests.[14]

Where a workman dies following an accident his employer is not estopped from denying that the death resulted from the accident by the fact that he has admitted liability for compensation for incapacity immediately following the accident.[15] But payment of compensation by the employer is evidence against him that there was an "accident."[16] [i]

The arbitrator may visit the scene of the accident and base a decision in favor of the claimant upon inferences from what he has observed there, though contrary to the claimant's testimony.[17]

In the following cases it was held that the burden of proving "injury

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[6] Cf. Taylor v. Clark (H. L., 1914), 7 B. 871; Sneddon v. Greenfield Co. (1910), 3 B. 557; Gatton v. Limerick Co. (1910), 2 Ir. 561.

[7] Cf. Marshall v. S.S. "Wild Rose" (H. L., 1910), 3 B. 514.

[8] Marshall v. Orient Co. (1910), 3 B. 15; and cf. Smith v. Coed Colliery (1900), 2 M.-S. 121.

[9] Borland v. Watson (1912), 5 B. 514.

[10] Nicholas v. Dawson (1899), 1 M.-S. 80.

[11] Furnival v. Johnson's Co. (1911), 5 B. 43; Southall v. Cheshire News (1912), 5 B. 251.

[12] Grime v. Fletcher (1915), 8 B. 69.

[13] Gilbey v. Gt. Western R'y (1910), 3 B. 135; Amys v. Barton (1912), 5 B. 117; Smith v. Hardman (1913), 6 B. 719; Hewitt v. Stanley (1913), 6 B. 501; Wolsey v. Pethick (1908), 1 B. 411; Langley v. Reeve (1910), 3 B. 175.

[14] Tucker v. Oldbury Council (1912), 5 B. 296; and cf. Beare v. Garrod (1915), 8 B. 474.

[15] Cleverly v. Gas Co. (H. L., 1907), 1 B. 82.

[16] Harley v. Walsall Co. (1915), 8 B. 86. Compare French decisions upon closely related questions, post.

[17] Durant v. Smith (1914), 7 B. 415.

[e] Cf. Sexton v. Newark Co. (1913), 84 N. J. L. 85; First National Bank v. Industrial Commission (1915), 161 Wisc. 526; Burns Case (1914), 218 Mass. Mass. 8; Hills v. Blair (1914), 184 Mich. 20; Smith v. Industrial Accident Commission (Cal., 1915), 147 Pac. 600; Corral v. Hamlyn (R. I., 1915), 94 Atl. 877. Rhyner v. Hueber Co. (N. Y., 1916), 171 App. Div. 58; Heitz v. Rupert (1916), 218 N. Y. 148.

[f] Cf. International Harvester Co. v. Industrial Commission (1914), 157 Wisc. 167; Heileman v. Industrial Commission (1915), 161 Wisc. 46; Gardener v. Horseheads Co. (N. Y., 1916), 156 N. Y. Supp. 899.

[g] Milwaukee Co. v. Industrial Commission (1915), 159 Wisc. 635.

[h] Award cannot be based upon hearsay evidence, Englebretson v. Industrial Accident Commission (Cal., 1915), 151 Pac. 421; Employers' Assurance Corporation v. Industrial Commission, id., 423; Reck v. Whittlesberger (Mich., 1914), 148 N. W. 247; International Harvester Co. v. Industrial Commission (Wisc. 1914), 147 N. W. 53; *contra*, hearsay evidence admissible, Carroll v. Knickerbocker Ice Co. (N. Y., 1915), 169 App. Div. 450; reversed, Court of Appeals, July, 1916.

[i] Cf. Spooner v. Beckwith (Mich., 1915), 149 N. W. 971.

by accident" had not been met: Where a collier suffered a stroke of apoplexy in the course of his work, the medical evidence being to the effect that his arteries were in such a diseased condition that apoplexy might have come at any time, and there being no evidence that it came while he was incurring any strain.[18] Where a laborer, apparently in good health, died suddenly from heart failure while lifting baskets filled with corn, there being no evidence that anything unusual or unexpected had occurred that afternoon in the course of the work until the sudden attack of illness.[19] Where a farm laborer became incapacitated through the strangulation of an old rupture in the course of his work, there being no proof of anything specific having happened to cause the rupture to recur.[20] Where a bus driver fell from his box and was picked up dead, but there was no proof as to how it happened and the medical evidence indicated that his heart was in such a condition that he might have suddenly collapsed and died of heart failure.[21] Where a workman called out suddenly that he had hurt his back, was taken home complaining of pains, and died a week later of intestinal obstructions, but there was no evidence to connect them with an accident.[22] Where a collier died from blood poisoning following a superficial abrasion on his knee, such abrasion being common in his work, but there was no evidence as to how and when the abrasion was caused.[23] Where a weaver, having got dust in his eye, rubbed the eye until it became sore and infected, but there was no evidence as to when and how the infection occurred.[24] Where a workman was injured by falling from a cart and died nine days later, but the medical evidence indicated no connection between the injury from that accident and his death.[25] Where a workmai who had injured his head in an accident and in consequence suffered badly from traumatic neurasthenia, about eight months after the accident was found drowned in a canal not far from his home, there being no data whatever from which an inference could be reasonably drawn that he had committed suicide and that the suicidal tendency was the result of the accident.[26] Where a workman was put under anaesthetics to amputate a finger injured by an accident and immediately thereafter anaesthetics were again administered to remove a tooth of which he had complained, during which latter operation he died.[27]

On the other hand, where a man, while tightening a nut with a spanner, fell back on his head and died, and the medical evidence showed that he was suffering from an aneurism in such an advanced stage that a very slight exertion would have been sufficient to bring about a rupture, it was held on appeal, by a divided court, that a finding of fact by an arbitrator that death resulted from an accident could not be set aside.[28] And the same was held where a workman, having suffered a severe shock by accident, later died of peritonitis, and the medical evidence was to the

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[18] Barnabas v. Bersham Co. (1910), 4 B. 119; to similar effect, Hawkins v. Powells (1911), 4 B. 178; Beaumont v. Underground Railways (1912), 5 B. 247.

[19] Kerr v. Ritchies (1913), 6 B. 419.

[20] Walker v. Murrays (1911), 4 B. 409: to similar effect, Perry v. Ocean Co. (1912), 5 B. 421.

[21] Thackway v. Connelly (1909), 3 B. 37; to similar effect, Powers v. Smith (1910), 3 B. 70.

[22] Farmer v. Stafford (1911), 4 B. 223.

[23] Howe v. Fernhill Collieries (1912), 5 B. 629; to similar effect, Wood v. Davis (1911), 5 B. 113.

[24] Bellamy v. Humphries (1913), 6 B. 658.

[25] Browne v. Kidman (1911), 4 B. 199; to similar effect, Marshall v. Sheppard (1913), 6 B. 571; Honor v. Painter (1911), 4 B. 188; Paton v. Dixon (1913), 6 B. 882; Griffiths v. North's Collieries (1912), 5 B. 21.

[26] Southall v. Cheshire News (1912), 5 B. 251.

[27] Charles v. Walker (1909), 2 B. 5.

[28] ver, Clayton & Co. v. Hughes (H. L., 1910), 3 B. 275.

effect that in all probability he would not have died but for the accident.[29]

In the following cases it was held that the burden of proving "injury by accident arising out of and in the course of the employment" had not been sustained: Where a ship's fireman, having gone ashore without leave, returned aboard in the night, very drunk, and in the morning was found fatally injured at the bottom of a hold, the only access to which was through a part of the ship where he had no business to go, and there was no proof of how the accident happened.[30] Where an engineer in charge of two traveling cranes was crushed to death while climbing on a third crane, there being no evidence to show why he went there.[31] Where a miner was found asphyxiated in a dangerous part of the mine where the men had been warned not to go, and there was no explanation as to why he went there.[32] Where an engine driver, whose duty it was to stay by his engine, was killed when, for some unexplained reason, he left it and was crossing some distant tracks.[33] [j] Where an engineer of a ship in a dry dock, returning aboard from dinner on shore, was last seen talking to a man at the side of the dry dock, in which his dead body was subsequently found.[34] [k] Where a workman in charge of a barge left his cabin and some hours later was found drowned about 150 feet up the river from the barge, the run of the tides not indicating a fall from the barge.[35] Where a boatman was last seen walking away with a boathook from a barge he had just tied up, and some minutes later his body was found drowned nearby and a boathook was found near his body hanging from a barge not belonging to his employer.[36] Where a stoker on a ship in the tropics went into a bunker adjoining the stokehold and there suffered a stroke of heat apoplexy, the medical evidence leaving it doubtful whether or not the stroke was due to the work he had been doing.[37] Where a workman in a mill yard was hit on the head by a barrel lid, which must have been deliberately thrown from one of the upper windows of the mill, but why or by whom could not be proved.[38] Where a gamekeeper, who handled dead animals both in the course of and outside of his employment, contracted anthrax, but there was no evidence as to when and how it was contracted.[39] Where a workman died from blood poisoning, but the evidence left it doubtful whether there had been any accident and was against the probability that the poisoning could have been the result of an accident at the time alleged.[40] Where a workman lost a finger through septic poisoning of a wound incurred at home, there being no proof as to when and how the wound became infected, though regularly in the course of his work, dirt, grease and other noxious matter worked into the cut.[41] Where a captain returning to his ship from a trip ashore was drowned

[29] Euman v. Dalziel (1913), 6 B. 900; to similar effect, Thoburn v. Bedlington (1911), 5 B. 128.
[30] O'Brien v. Star Line (1908), 1 B. 177.
[31] Millers v. N. B. Locomotive Co. (1909), 2 B. 80; to similar effect, Smith v. Stanton Co. (1913), 6 B. 239; Dougal v. Westbrook (1913), 6 B. 705; Traynor v. Addie (1910), 4 B. 357.
[32] Morgan v. Cynon Co. (1915), 8 B. 499.
[33] Dyhouse v. Gt. Western R'y (1913), 6 B. 691; to similar effect, Sneddon v. Greenfield (1910), 3 B. 557.
[34] Gilbert v. Trawler "Nazzam" (1910), 3 B. 455; to similar effect, Booth v. Leeds Co. (1914), 7 B. 434; and cf. Mitchell v. S.S. "Saxon" (1912), 5 B. 623.
[35] Chavril v. Mauser (1912), 5 B. 385; and cf. Gatton v. Limerick Co. (1910), 2 Ir. R. 561.
[36] Bones v. Gueret (1913), 6 B. 120.
[37] Olson v. S.S. "Dorset" (1913), 6 B. 658.
[38] Bateman v. Albion Co. (1914), 7 B. 47.
[39] Sherwood v. Johnson (1912), 5 B. 686.
[40] Jenkins v. Standard Co. (1911), 5 B. 71.
[41] Chandler v. Gt. Western R'y (1912), 5 B. 254.

[j] To similar effect, Savage's Case, supra.
[k] To similar effect, Steers v. Dienewald (1914), 85 N. J. L. 448.

under such circumstances that the accident could be connected with the employment only upon condition that he had gone ashore on the ship's business, and there was no evidence as to why he had gone ashore.[42]

But in the following cases inferences that the injuries were "by accidents arising out of and in the course of the employment" were sustained:[1] Where a workman, traveling in the course of his work in an ordinary compartment of a railway train, fell out of the side door in some unexplained manner, the evidence showing that some few moments before the fatal event he was proceding on his journey in a normal manner.[43] Where a train guard, waiting at a station for his train, sat on a buffer to rest himself, and was next seen lying between the rails with a wound in his head and other injuries.[44] Where a workman in an ironworks went from his furnace to the blacksmith shop along a canal, and failing to return when expected was found drowned in the canal.[45] Where a watchman on a ship in dock moored to a jetty, who had to attend to the ship and its moorings, was last seen one evening with a parcel ashore near the ship, and the next morning was found drowned in the dock and the parcel was found by the moorings.[46] Where an engine driver, subject to heart attacks, was seen tightening a nut on the side of his engine, and was next seen a few moments later lying beside his engine, "all doubled up" in agony.[47] Where a collier one day complained to a foreman that he had hurt his foot and the foreman observed a fall of rock where he had been working, and some weeks later the workman died of tetanus resulting from an injury to his foot.[48] Where a collier died from blood poisoning resulting from an injury to his finger, and the evidence showed that one morning he had arrived at his work with the finger uninjured and that when he reached home that evening it was hurt.[49] Where a bricklayer returned home from work one evening with a new wound on the back of his hand, from which blood poisoning subsequently resulted, and it was established that the wound was of a kind peculiarly common to bricklayers.[50] Where a butcher's man, who rode a bicycle in his work, arrived at the shop one day lame, covered with mud, leading his bicycle and complaining of an injury, of which injury he subsequently died.[51] Where a railroad station policeman was run down and killed on a nearby siding, though there was no evidence as to how or why he came to be at that particular place.[52] Where a brakeman in charge of one train which was pushing another train was killed in trying to pass from his train to the other, it being inferred that he was going forward to set a switch, which some one of the brakemen had to set.[53] Where a wounded workman, who had been taken back and put at work, which was apt to cause a strain before his wound had completely healed, was observed to be bleeding from the

[42] Hewitt v. S.S. "Duchess" (H. L., 1911), 4 B. 317.
[43] Pomfret v. Lancashire R'y (1903), 5 M.-S. 22.
[44] Sheehy v. Gt. Southern R'y (1913), 6 B. 927.
[45] Furnival v. Johnson's Co. (1911), 5 B. 43.
[46] Richardson v. S.S. "Avonmouth" (1912), 5 B. 34.
[47] Fennah v. Midland R'y (1911), 4 B. 440.
[48] Stapleton v. Dinington Co. (1912), 5 B. 602; and cf. Hayward v. Westleigh Co. (H. L., 1915), 8 B. 278.
[49] Mitchell v. Glamorgan Co. (1907), 9 M.-S. 16; to similar effect, Wright v. Kerrigan (1911), 4 B. 432.
[50] Fleet v. Johnson (1913), 6 B. 60.
[51] Haward v. Rowsell (1914), 7 B. 552.
[52] Grant v. Glasgow R'y (1908), 1 B. 17.
[53] Evans v. Astley (H. L., 1911), 4 B. 319.

[1] Cf. Heileman v. Shaw (1915), 161 Wisc. 443; Muzik v. Erie R. R. Co. (1913), 85 N. J. L. 129; In re Fisher (Mass., 1915), 108 N. E. 361.

wound, and, thereupon quitting his work, septic poisoning followed and he died.[54]

Unexplained Drowning of Seamen. Unexplained drownings of persons regularly employed on vessels at sea and in harbor force resort to extreme inferences and have given rise to some rather doubtful distinctions. Where a cook on a steamship, who fell overboard and was drowned, was last seen on deck on a quiet morning at sea, and there was no evidence as to how he came to go overboard, it was held on appeal that no inference could be drawn that he was drowned by accident arising out of his employment.[55] And the same was held where an engineer on a ship in harbor left his berth, saying that he was going on deck for a breath of fresh air, and the next morning his body was found drowned in the water alongside just under his usual resting place on deck.[56] But, it seems, there is a distinction where the seaman's duties bring him on deck. Where the chief officer of a vessel, who had been complaining of headache and giddiness, disappeared while on duty on deck in broad daylight, without anyone seeing what had happened, it was held that there was evidence from which to infer an accident arising out of the employment.[57] And the same was held where a fireman on a ship disappeared, being last seen on deck getting a drink,[58] where an engineer on a tug in harbor, whose duties required him to be frequently on deck, was last seen in his bunk, an hour afterwards was missed, his working clothes remaining by his bunk, and two days later his body, clad in sleeping clothes, was found in the water nearby,[59] where a steward on a ship in harbor was ordered out of his bunk by the captain to make tea for the men on deck, disappeared and was found drowned in the water nearby several days later,[60] and where the chief engineer of a ship disappeared at sea, having been last seen walking aft on deck, and it being shown that he was troubled about the workings of a new propeller, which could be observed from the stern deck.[61] On the other hand, where a night watchman on a ship tied up in harbor disappeared and some months later his body was found drowned in the water nearby, it was held on appeal that the refusal of the arbitrator to infer an accident arising out of and in the course of the employment was not reversible error.[62]

THE GERMAN LAW. To establish a claim for compensation it must be proved that there was an accident, that it occurred in the course of the work, that it arose out of the work, and that the injury resulted from the accident.[63]

There is a presumption that the accident was not intentionally brought about by the victim in the absence of proof to the contrary.[64]

That the accident occurred in the course of the work is proved by showing that what the workman was doing at the time was for a trade purpose.[65] If what he was then doing was in disobedience of orders, there

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[54] Groves v. Burroughs (1911), 4 B. 185.
[55] Bender v. S.S. "Zent" (1909), 2 B. 22; to same effect, Burwash v. Leyland (1912), 5 B. 663.
[56] Marshall v. S. S. "Wild Rose" (H. L., 1910), 3 B. 514.
[57] Ship "Swansea Vale" v. Rice (H. L., 1912), 4 B. 298.
[58] Lee v. Stagg Line (1912), 5 B. 660.
[59] McKinnon v. Miller (1909), 2 B. 64.
[60] Kerr v. Lendrum (H. L., 1914), 7 B. 801.
[61] Proctor v. S.S. "Serbino" (1915), 8 B. 572.
[62] Gatton v. Limerick Co. (1910), 2 Ir. R. 561. And cf. Chavril v. Mauser (1912), 5 B. 385.
[63] Cf. Handbuch, pp. 49, 73, 76.
[64] Id., p. 253.
[65] Id., p. 88.

is a presumption that it was not for a trade purpose, in the absence of proof to the contrary.[66]

The nature and degree of the proof required vary according to the circumstances of the case. At one extreme, where a workman is found dead at his proper place of work and the causes of his death cannot be proved but all the circumstances point with a high degree of probability to the conclusion that it was due to the work, both the fact of an accident and the relation between the work and the accident may be inferred.[67] At the other extreme, very clear proof is required to connect with the work any sudden outbreak of hernia, heart disease, etc., occurring in the course of the work,[68] or so to connect a quarrel or an assault.[69]

In the following cases death by accident arising out of and in the course of the work was inferred:[70] Where a workman in a sugar factory, who had climbed the stairs to the highest story of the filter tower and entered the condenser to clean it, was, immediately thereafter, found leaning over the condenser, dead. Where a workman was found dead in a workroom in which he had some work to do, which room was dangerous for anybody because of high temperature and poisonous fumes. Where a miner was found dead in a dangerous cross cutting where he had to do some work. Where a driver had to sleep in a strange stable loft and in the morning was found dead with a fractured skull at the foot of a steep ladder leading to the floor below. Where a night foreman at a steam pumping plant was found dead in the intake pipe. Where a stonecutter, who suffered from epilepsy, was found dead in the quarry under circumstances clearly indicating that he had struck his head in falling. And where members of crews of ships are found dead in the water near or disappear from their ships, work accidents will be inferred, if direct proof is unobtainable and the circumstances all point to that conclusion with a high degree of probability.[71]

THE FRENCH LAW. The burden is upon the claimant to prove the fact of an accident and the relation between the accident and the work, without derogation from the principles of the common law (*"droit commun"*).[72] So also must the relation between the accident and subsequent death or incapacity be proved.[73] But having proved an accident during the time and at the place of work, the claimant need not prove the cause of the accident.[74] And where an accident is proved to have occurred during the time and at the place of the work, it is presumed to have been caused or occasioned by the work, in the absence of proof to the contrary.[75] Where an injury is aggravated or accelerated by subsequent events the burden of proving the requisite causal relation between such events and the original accident is upon the claimant.[76] The fact that the employer makes the obligatory accident report and pays the workman compensation for some weeks does not estop him from subsequently denying that there

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[66] Handbuch, p. 79.
[67] Id., p. 92.
[68] Id., p. 73.
[69] Id., p. 83.
[70] Id., p. 92.
[71] Cf. id.
[72] Cass. civ., June 10, 1902; Cass. req., Feb. 29, 1904.
[73] Cass. req., Jan. 19, 1903; id., April 27, 1903.
[74] Cass. civ., Feb. 8, 1911; and cf. id., Dec. 8, 1909.
[75] Cass. req., Oct. 25, 1910.
[76] Cf. Cass. req., July 28, 1908; Cass. civ., July 27, 1905; Cass. req., Jan. 28, 1903.